



**JOINT MEETING OF THE MILPITAS CITY COUNCIL,  
MILPITAS HOUSING AUTHORITY AND MILPITAS  
ECONOMIC DEVELOPMENT CORPORATION**

**AGENDA**



**TUESDAY, AUGUST 5, 2014**

**455 EAST CALAVERAS BOULEVARD, MILPITAS, CA  
6:00 P.M. (CLOSED SESSION) • 7:00 P.M. (PUBLIC BUSINESS)**

**SUMMARY OF CONTENTS**

- I. CALL TO ORDER by the Mayor (6:00 p.m.)**
- II. ADJOURN TO CLOSED SESSION**
  - 1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**  
Pursuant to California Government Code Section 54956.8  
Property: McCandless Property APN 086-41-016 and APN 086-41-017  
Negotiating with: Stratford Schools, Nobel Learning Communities Inc., and Milpitas Unified School District  
Under Negotiation: Potential Sale of Property
  - 2. CONFERENCE WITH LABOR NEGOTIATORS - COLLECTIVE BARGAINING**  
Pursuant to California Government Code Section 54957.6  
City Negotiators: Tom Williams, Carmen Valdez  
Employee Groups: International Association of Fire Fighters (IAFF) Local 1699, Milpitas Employees Association (MEA), Mid-management and Confidential Unit (Mid-Con), and Professional and Technical Group (ProTech)  
Under Negotiation: Wages, Hours, Benefits, and Working Conditions
  - 3. CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION**  
Pursuant to California Government Code Section 54956.9(c)  
City as Plaintiff
  - 4. PUBLIC EMPLOYEE PERFORMANCE EVALUATIONS**  
Pursuant to CA Government Code Section 54957  
Positions: City Manager and City Attorney
- III. CLOSED SESSION ANNOUNCEMENTS:** Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote or abstention of each member present
- IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)**
- V. INVOCATION (Councilmember Giordano)**
- VI. APPROVAL OF COUNCIL MEETING MINUTES – June 17, 19 and July 3, 2014**
- VII. SCHEDULE OF MEETINGS – COUNCIL CALENDAR – August 2014**
- VIII. PUBLIC FORUM**

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Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. However, the Council may instruct the City Manager to place the item on a future meeting agenda.

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**IX. ANNOUNCEMENTS**

**X. ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

**XI. APPROVAL OF AGENDA**

**XII. CONSENT CALENDAR (Items with asterisks\*)**

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Consent calendar items are considered to be routine and will be considered for adoption by one motion. There will be no separate discussion of these items unless a member of the City Council, member of the audience, or staff requests the Council to remove an item from or be added to the consent calendar. Any person desiring to speak on any item on the consent calendar should ask to have that item removed from the consent calendar. If removed, this item will be discussed in the order in which it appears on the agenda.

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**XIII. PUBLIC HEARINGS**

- 1. Hold Public Hearing to Consider Request to Host a Flag Ceremony at City Hall Outside Plaza by Pakistan American Culture Center on August 14, 2014 (Staff Contact: Mary Lavelle, 408-586-3001)**
- 2. Hold Public Hearing to Adopt Resolution Confirming Weed Abatement Assessments to be Entered on Tax Assessment Bills (Staff Contact: Albert Zamora, 408-586-3371)**

**XIV. UNFINISHED BUSINESS**

- \* 3. Receive the Monthly Update of the Odor Control Report (Staff Contact: Jeff Moneda, 408-586-3345)**

**XV. REPORTS OF MAYOR AND COMMISSION**

- 4. Per Request of Mayor Esteves, Consider Introduction of Ordinance No. 288 Adding a New Section 6 to Chapter 1 of Title I of the Milpitas Municipal Code Authorizing Installation of the National Motto "In God We Trust" within City Council Chambers, City Hall Committee Room and Other Public Building Lobbies (Staff Contact: Michael Ogaz, 408-586-3040)**
- 5. Per Request of Mayor Esteves, Approve a Consultant Agreement with Water Solutions, Inc. for a Feasibility Study Regarding Water Supply Augmentation for \$229,000 and Approve a Budget Appropriation (Contacts: Mayor Jose Esteves 408-586-3029 and staff Steven Machida, 408-586-3355)**
- \* 6. Per Request of Mayor Esteves, Adopt a Resolution Regarding Building an Early Learning Nation by 2025 (Staff Contact: Michael Ogaz, 408-586-3040)**
- \* 7. Consider Mayor's Recommendation of Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**
- \* 8. Approve the FY 2014-15 Annual Work Plan of the Sister Cities Commission (Staff Contact: Leslie Stobbe, 408-586-3352)**

**XVI. NEW BUSINESS**

- \* 9. Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2014 (Staff Contact: Emma Karlen, 408-586-3145)

**XVII. RESOLUTIONS**

- \* 10. Adopt a Resolution of the City of Milpitas Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 408-586-3145)
- \* 11. Adopt a Resolution to Authorize the Bay Area Water Supply & Conservation Agency to Initiate and Settle Arbitration Disputes Related to the Water Supply Agreement with the City and County of San Francisco (Staff Contact: Steven Machida, 408-586-3355)
- \* 12. Adopt a Resolution Awarding to and Approving a Contract with Matthew W. Adams, an individual doing business as All-Line Uniform Sales to Furnish Annual Clothing for City Employees in an Amount Not-to-Exceed \$14,434.24 and Authorize the City Manager to Exercise up to four Annual Renewals (Staff Contact: Chris Schroeder, 408-586-3161)
- \* 13. Adopt a Resolution Awarding to and Approving a Contract with Jordan C. Lee, an individual doing business as AAA Backflow Prevention Services, for Backflow Testing Certification and Maintenance Repair Services in an Amount Not-to-Exceed \$49,310 and Authorize the City Manager to Exercise up to Three Annual Renewals (Staff Contact: Chris Schroeder, 408-586-3161)
- \* 14. Adopt a Resolution to Approve the Sole Source Purchase and Installation of eCompliance Uniform Hazardous Materials Program Consolidated Forms Software for the Initial Not-To-Exceed Amount of \$8,000 and Allow the City Manager to Approve Up to Four Annual Renewals (Staff Contact: Chris Schroeder, 408-586-3161)
- \* 15. Adopt a Resolution Granting Final Acceptance of the City Hall Audio Visual System Upgrade, Project No. 9001 (Staff Contact: Jeff Moneda, 408-586-3345)
- 16. Consider Adoption of a Resolution Calling and Giving Notice of the Submission to the Electors of the City of Milpitas at the General Municipal Election to be Held on November 4, 2014 a Ballot Measure Proposal of an Ordinance to Add Chapter 8 to Title III of the Milpitas Municipal Code Related to Issuance of License to Operate a Card Room in Compliance with State Law and Imposing a Card Room Tax at the Rate of 10.5% of Gross Revenues (Staff Contacts: Mike Ogaz, 408-586-3040 and Tom Williams, 408-586-3050)

**XVIII. AGREEMENTS**

- \* 17. Approve a Consultant Agreement with BFGC Architects Planners, Inc. for the Milpitas Sports Center Pool Improvements Project No. 3408 in the Amount of \$76,000 (Staff Contact: Steve Erickson, 408-586-3301)
- \* 18. Approve Amendment No. 3 to the Agreement with Intelligent Technologies and Service, Inc. for Fire Suppression System Inspection, Testing, Maintenance and Repair at City Hall for an Amount Not-to-Exceed \$5,586 (Staff Contact: Chris Schroeder, 408-586-3161)
- \* 19. Approve Amendment No. 1 to the Agreement with Peelle Technologies, Inc. Extending the Agreement for Document Imaging Services for Two Years in an Amount Not-to-Exceed \$50,000 Annually (Staff Contact: Chris Schroeder, 408-586-3161)

**XIX. DEMAND**

- \* 20. Receive Report of Emergency Repair of Dempsey Road Drive Water Main, Approve a Budget Appropriation from the Water Fund, and Authorize Staff to Pay Repair Work Invoices Totaling \$45,814.89 (Staff Contact: Jeff Moneda, 408-586-3345)

**XX. JOINT MEETING OF CITY COUNCIL, MILPITAS HOUSING AUTHORITY COMMISSION, AND BOARD OF THE MILPITAS ECONOMIC DEVELOPMENT CORPORATION**

1. Call to Order/Roll by the Mayor/Chair
2. Approval of Agenda/Consent Calendar
- \*3. Adopt a Joint Resolution of the City Council, the Housing Authority Commission and the Economic Development Corporation Authorizing Conveyance of Certain Real Property to the City of Milpitas for Public and Economic Development Purposes and Acceptance of those Conveyances by the City (Staff Contact: Emma Karlen, 408-586-3145)
4. Adjourn Joint Meeting

**XXI. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, AUGUST 19, 2014**

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

e-mail: [mogaz@ci.milpitas.ca.gov](mailto:mogaz@ci.milpitas.ca.gov) / Phone: 408-586-3040

*The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) by selecting the Milpitas Municipal Code link.*

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3<sup>rd</sup> floor 455 E. Calaveras Blvd., Milpitas and on the City website.

All City Council agendas and related materials can be viewed online here:  
[www.ci.milpitas.ca.gov/government/council/agenda\\_minutes.asp](http://www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp) (select meeting date)

**APPLY TO SERVE ON A CITY COMMISSION**

Commission application forms are available online at [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov) or at Milpitas City Hall. Contact the City Clerk's office at 408-586-3003 for more information.

*If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 408-586-3001 or send an e-mail to [mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov) prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.*



## AGENDA REPORTS

### **XIII. PUBLIC HEARINGS**

- 1. Hold Public Hearing to Consider Request to Host a Flag Ceremony at City Hall Outside Plaza by Pakistan American Culture Center on August 14, 2014 (Staff Contact: Mary Lavelle, 408-586-3001)**

**Background:** The Pakistan American Culture Center of Milpitas filed two applications with the City Clerk: (1) to rent Milpitas City Hall outdoor plaza from 7:00 – 9:00 PM on Thursday, August 14, 2014 and (2) a request to hold a ground level flag ceremony on that date. Milpitas Municipal Code I-600-2.40 requires “all ground level ceremonies must be approved by the City Council . . . and . . . a public hearing will be held regarding each ground level ceremony application prior to its approval or denial by the City Council.”

Mr. Syed Mohsin and Mr. Mohammad Aboobaker from PACC submitted appropriate forms along with application fee in July. The group would like to hold an outdoor flag ceremony and speeches, outside at the back patio of City Hall, and followed by a brief outdoor reception where approximately 75 people are anticipated to attend. An insurance certificate must be submitted to City Clerk along with rental fees in advance of the event.

The City Council must hold a public hearing for any comments, and then following the hearing, Council shall determine if it will approve the request.

**Fiscal Impact:** Fees will be appropriately collected for rental cost and staff time for the event.

**Attachments:**

- A. Rental Facility Application
- B. Flag Ceremony Application
- C. Layout Design for Event
- D. Milpitas Municipal Code on Flag Ceremony

**Recommendations:**

1. Hold a public hearing, and move to close it following comments.
  2. Consider request and approve a flag ceremony by the Pakistan American Culture Center at Milpitas City Hall outside plaza on Thursday, August 14, 2014 from 7:00 to 9:00 PM.
- 2. Hold Public Hearing to Adopt Resolution Confirming Weed Abatement Assessments to be Entered on Tax Assessment Bills (Staff Contact: Albert Zamora, 408-586-3371)**

**Background:** On January 7, 2014, City Council adopted Resolution No. 8329 declaring noxious or dangerous weeds growing upon certain described property to be a public nuisance that must be abated by the removal of the weeds. If the public nuisance was not removed from the properties by the owner, the City contracted with the County Department of Agriculture and Environmental Management to remove the weeds and abate the nuisance. In accordance with Title V, Chapter 202, Weed Abatement, of the Milpitas Municipal Code, the County Department of Agriculture and Environmental Management filed with the City Clerk a report and assessment list on weeds abated within the City as nuisances. The report and notice of the public hearing was made available at City Hall per Milpitas Municipal Code section V-202-9.00.

The City’s regulations require that the City Council “shall hear the report together with any objections of the property owner liable to be assessed and make such modifications on the proposed assessment as it deems necessary.”

After adoption by the City Council, the resolution will not be recorded and charges thereon become a lien on the land involved to be collected in the same manner as property taxes. A copy

of the assessment list and the proposed resolution confirming the weed abatement report are included in the Council's agenda packet.

**Attachments:**

- A. Resolution
- B. 2014 Weed Abatement Assessment list

**Recommendations:**

- 1. Open the public hearing, and move to close the hearing, after any testimony.
- 2. Adopt City of Milpitas resolution confirming assessments for weed abatement for 2014.

**XIV. UNFINISHED BUSINESS**

- \* **3. Receive the Monthly Update of the Odor Control Report (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** From May 12 through July 13, 2014, the Bay Area Air Quality Management District (BAAQMD) received twenty-six odor complaints originating in Milpitas. Eight complaints identified a garbage odor, four complaints identified a sewage odor, and fourteen complaints did not identify an odor source. As of the last Council update, the City's odor reporting website has received 145 reported complaints.

**Recommendation:** Receive the odor report update.

**XV. REPORTS OF MAYOR**

- 4. Per Request of Mayor Esteves, Consider Introduction of Ordinance No. 288 Adding a New Section 6 to Chapter 1 of Title I of the Milpitas Municipal Code Authorizing Installation of the National Motto "In God We Trust" within City Council Chambers, City Hall Committee Room and Other Public Building Lobbies (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** "In God We Trust" became the national motto in 1956 and has been on the United States currency since 1864. In 2002, the City Council of Bakersfield, California adopted a resolution allowing the national motto, "In God We Trust," to be displayed inside the Bakersfield City Council Chambers. Shortly thereafter, Bakersfield Council Member Jacquie Sullivan founded a 501(c)(3) non-profit organization, *In God We Trust America, Inc.* The purpose of this organization is to encourage city governments to vote to display the national motto in their city council chambers.

*In God We Trust America, Inc.* has provided information to Mayor Esteves encouraging the Milpitas City Council to vote to display the national motto in the Milpitas Council Chambers. According to the organization, more than 107 cities and counties in California have voted to allow "In God We Trust" to be displayed in council chambers. This proposed Municipal Code amendment would authorize the City Manager to install "In God We Trust" within City Council Chambers, City Hall Committee Room, lobbies of the Senior Center, Community Center, and Sports Center, and the Police Department Community Room. The City Attorney's Office has reviewed the case law involving the display of the national motto "In God We Trust" and concluded that displaying the national motto in these locations currently would not violate the United States Constitution or any applicable federal or state laws.

**Recommendations:**

- 1. Following the City Attorney's reading of the title, move to waive the first reading beyond the title of Ordinance No. 288.
- 2. Move to introduce Ordinance No. 288 adding a new Section 6 to Chapter 1 of Title I of the Milpitas Municipal Code authorizing the installation of the National Motto, "In God We

Trust,” in the Council Chambers, City Hall Committee Room, lobbies of the Senior Center, Community Center, and Sports Center, and Police Community Meeting Room.

5. **Per Request of Mayor Esteves, Approve a Consultant Agreement with Water Solutions, Inc. for a Feasibility Study regarding Water Supply Augmentation for \$229,000 and Approve a Budget Appropriation (Contacts: Mayor Jose Esteves 408-586-3029 and staff Steven Machida, 408-586-3355)**

**Background:** The City of Milpitas Utility Engineering Section is responsible for long-term planning and procurement of water, sewer, and trash services. Long-term water supply planning is based upon average flow generation factors for various zoning types, such as single family and commercial. The 2009 Water Master Plan Update notes that normal and maximum day demands at build-out including the Transit Area Specific Plan (TASP) to be 17.4 and 31.1 million gallons per day (mgd), respectively. Milpitas currently uses an average of 10.0 mgd (residential average of 63 gallons per day per person), which is beginning to increase from the low of 9.9 mgd for fiscal year 2010-11. More than 1,300 dwelling units are currently under construction, with another 950 dwelling units expected to break ground shortly. Water demand is expected to increase by 0.5 mgd over the next few years, as these units are occupied.

State law requires water retailers to prepare Urban Water Management Plans, every five years, that describe past, present, and future water demands during normal water supply periods and water shortages. The City’s 2010 Urban Water Management Plan (UWMP) included the TASP planned residential dwelling units and was coordinated with the City’s wholesalers: San Francisco Public Utilities Commission (SFPUC) and Santa Clara Valley Water District (SCVWD). This plan shows that SFPUC is expected to deliver 90% of normal water supply during the first year of a drought, and 80% of normal water supply during the second and third years of a three-year drought. SCVWD believed it could provide 100% of normal water for each year of a three-year drought.

The California Governor declared a State-wide water supply shortage, earlier this year. Currently, SFPUC has requested a 10% voluntary conservation effort, which is in line with the planned 90% delivery. However, SCVWD is currently experiencing an unprecedented reduction in water supply from State and Federal sources and has implemented the following actions: issued a mandatory 20% conservation requirement, temporarily terminated service to non-municipal customers, and anticipates not meeting peak summer demand in August and September.

City staff had conducted interviews for consultant services associated with determining alternative water supplies and options to meet the water supply situation. City staff received Requests for Qualifications (RFQs) for this proposed work, which includes: a feasibility study to determine benefits, order of magnitude cost, and implementation schedule for additional conservation, recycled water expansion, surface water detention, groundwater, additional water rights, desalination, and water storage. It shall also include potential funding sources, adequacy of water distribution infrastructure and evaluations of the Water Utility Operation Structure/ Organization. At this time, the Council is requested to evaluate the various items and determine the scope of work for the study.

Mayor Esteves has initiated this request and asked that the City actively pursue this process. He requested to actively participate in this process.

It is estimated that a scope and fee for these services shall not exceed \$229,000. A copy of the proposed consultant agreement is included in the Council packet, and can be adjusted based on the scope of work identified by the City Council.

**California Environmental Quality Act:** The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

**Fiscal Impact:** This work was unforeseen when the budget was developed for Fiscal Year 2014-15. A budget appropriation of \$229,000 from the Water Fund to the Utility Engineering operating budget is necessary to conduct the study.

**Recommendations:**

1. Approve a consultant agreement with Water Solutions Inc. for a feasibility study regarding water supply augmentation for a not-to-exceed amount of \$229,000 for the term from August 5, 2014 to July 31, 2015.
2. Approve a budget appropriation of \$229,000 from the Water Fund to the Utility Engineering Operating Budget.

\* **6. Per Request of Mayor Esteves, Adopt a Resolution Regarding Building an Early Learning Nation by 2025 (Staff Contact: Michael Ogaz, 408-586-3040)**

**Background:** In June of 2014, the U.S. Conference of Mayors met in Dallas, TX and adopted an “Early Learning Nation” resolution. The U.S. Conference of Mayors supports a movement committed to engaging every community and particularly parents and caregivers in daily brain-building moments with their children, and supports designating the decade of 2015 to 2025 as an era of community focus in building an Early Learning Nation. The Mayors of numerous cities have co-sponsored the resolution as there is scientific evidence in the fields of neuroscience, development psychology and prevention science that positive parenting, caregiving and quality education in early childhood from birth to the age of three reduces grade retention, special education and juvenile delinquency in later years. This Resolution mirrors the language of the Early Learning Nation resolution adopted by the U.S. Conference of Mayors.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution in support of a national commitment to building an Early Learning Nation by the Year 2025.

\* **7. Consider Mayor’s Recommendation of Appointments to Milpitas Commissions (Contact: Mayor Esteves, 408-586-3029)**

**Background:** Mayor Esteves recommends the following appointments:

**Senior Advisory Commission:**

Appoint Jae Kuk Wi (current Alternate No. 1) as a regular member to a term that will expire in December 2014.

Appoint Jenny Berryhill (current Alternate No. 2) as Alternate No. 1 to a term that will expire in December 2015.

Newly appoint Willy Wong as Alternate No. 2 to a term that will expire in December 2014.

**Sister Cities Commission:**

Newly appoint Mikayla Horyza as the non-voting student member to a term that will expire in September 2016.

**Veterans Commission:**

Appoint Liliana Ramos (current Alternate No. 1) as a regular member to a term that will expire in February 2016.

Appoint Allen Thomas (current Alternate No. 2) as Alternate No. 1 to a term that will expire in February 2016.

Newly appoint Andre Ramones as Alternate No. 2 to a term that will expire in February 2016.

**Recommendation:** Receive Mayor’s recommendations and move to approve appointments to Milpitas Commissions.

- \* 8. **Approve the FY 2014-15 Annual Work Plan of the Sister Cities Commission (Staff Contact: Leslie Stobbe, 408-586-3352)**

**Background:** The Sister Cities Commission prepared an annual work plan for July 2014 – June 2015, included in the agenda packet. The plan lists six priorities for the fiscal year and outlines expectations of Commissioners and ideas for community engagement. The work plan is set for a fiscal year to coincide with managing an annual \$6,240 spending limit from the Council's community promotions budget.

The Commission recommends two new focus areas for the Sister Cities program: 1) expand the Electronic Pen Pal (E-Pal) Project to Milpitas' three sister cities, and; 2) explore fundraising methods and consider an event to raise funds that can supplement student and teacher travel to sister cities.

A pilot E-Pal Project began last year with the Digital Business Academy at Milpitas High School. This year, it will expand to accommodate up to 70 students that can be matched to sister city students in Dagupan (Philippines), Huizhou (China), and Tsukuba (Japan).

Regrettably, regular student visits in October 2014 of Dagupan and Huizhou students were canceled due to a lack of host family sign-ups (there is a concentrated effort to find hosts for 10 Dagupan students since this city's Memorandum of Understanding is due for renewal this year). The E-Pal Project is expected to significantly raise student interest in relationships with sister city students and lead to an increase in parent and guardian willingness to host visiting students for 10 days.

Secondly, the Commission is interested in fundraising activities that will effectively raise funds to supplement travel expenses for students and teachers visiting Milpitas' sister cities. The work plan designates August through October meetings to review the intended use of funds and to invite a fundraising expert to guide Commissioners' in their planning and implementation. Then, January through May meetings will explore the possible nature of a fundraiser, initial costs, anticipated outcomes and a potential event.

After research and review of the decline in community involvement with the Sister City program over the past five years, the Commission targets these new projects as the building blocks to generate interest in hosting visiting students and move towards sending student and teacher ambassadors to Milpitas' sister cities.

**Fiscal Impact:** None. There is a spending limit for sister city activities of \$6,240 from the Council's community promotions budget.

**Recommendation:** Approve the FY 2014-15 Annual Work Plan of the Milpitas Sister Cities Commission.

## **XVI. NEW BUSINESS**

- \* 9. **Receive City of Milpitas Investment Portfolio Status Report for the Quarter Ended June 30, 2014 (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended June 30, 2014 is submitted for review.

The Portfolio Summary Report (included in the Council's packet) provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity and the equivalent yields for each type of investment. The

Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of June 30, 2014.

As of June 30, 2014, the principal cost and market value of the City's investment portfolio was \$171,460,765 and \$171,637,827 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended June 30, 2014 was 0.56%. The comparative benchmarks for the same period were 0.23% for LAIF (Local Agency Investment Fund) and 0.36% for the 12-month average yield of the 2 year Treasury Note. The weighted average maturity of the portfolio was 467 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

The market values of the securities were provided by BNY Mellon, the safekeeping bank of the City's securities. All the securities owned by the City are held in the trust department of BNY Mellon under the terms of a custody agreement.

Three charts are included with the agenda packet that show investment by maturity levels, comparison of the City's portfolio yields to other benchmark yields as well as a trend of the type of securities in the City's portfolio, weighted average maturity and average yield.

**Fiscal Impact:** None.

**Recommendation:** Receive the investment report for the quarter ended June 30, 2014.

## **XVII. RESOLUTIONS**

- \* 10. Adopt a Resolution of the City of Milpitas Approving the Annual Investment Policy (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** Investment laws require all local agencies to develop an annual investment policy that must be considered by the legislative body of the local agency at a public meeting. The red-lined version of the Annual Investment Policy (the Policy) for the City of Milpitas is submitted for review and approval. Finance staff continues to monitor changes to the California Government Code regarding investment parameters and allowable investments that may impact the City's investment policy.

Staff proposes two changes to the Investment Policy:

- 1) Modify the term used for one of the authorized investments from money market mutual fund to money market fund. There are a variety of mutual funds that are managed professionally that invest in stocks, bonds or short-term securities. A money market fund is one type of mutual fund that invests in short term securities and typically maintains a price per share value of \$1. It is always the intention of the Investment Policy to allow investment in money market fund that invests in short term U.S. Treasury and Government Agency securities but not in stocks. To avoid confusion, staff recommends changing the term from money market mutual fund to money market fund.

- 2) The City currently does not have an internal auditor who audits the City's investment held by third party safekeeping bank quarterly. This particular function is performed by the Finance Director. Staff recommends changing the requirement to review and verification of the investment holding quarterly by a Finance staff member who is not assigned to the investment function. This will strengthen the internal control by separating the duties of the review function to be performed by staff that does not have the authority to perform the investment function.

The updated Policy is in compliance with the provisions of California Government Code Sections 16429.1-16429.4 and 53600-53610, the authority governing investments for municipal governments.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution of the City of Milpitas approving the Annual Investment Policy, including two new changes.

- \* 11. **Adopt a Resolution to Authorize the Bay Area Water Supply & Conservation Agency to Initiate and Settle Arbitration Disputes Related to the Water Supply Agreement with the City and County of San Francisco (Staff Contact: Steven Machida, 408-586-3355)**

**Background:** The City of Milpitas purchases water from the San Francisco Public Utilities Commission (SFPUC) and is a member of the Bay Area Water Supply and Conservation Agency (BAWSCA). In 2009, the City approved the Water Supply Agreement (WSA) between SFPUC and the Wholesale Customers, which Milpitas is included as one customer, and the subsequent Amendment No. 1 in the spring of 2013.

The WSA requires that all disputes related to the calculation of the capital and operating costs owed by the Wholesale Customers be resolved through mandatory binding arbitration. This requirement includes disputes related to SFPUC's adherence to accounting and auditing practices and the classification of new assets for cost allocation. All other questions or disputes related to the WSA, such as water supply, may be presented to a court and are excluded from this request for delegated authority.

With the formation of BAWSCA in 2002 and the adoption of the WSA in 2009, Wholesale Customers have been relying on BAWSCA to address many of the technical and contract administration items in the WSA, but BAWSCA does not have the authority to settle arbitration disputes for the Wholesale Customers.

The BASWCA Board would like to formalize the delegation of arbitration authority to allow BAWSCA to continue oversight and determine whether to initiate or settle arbitration disputes with SFPUC. This delegated authority will not be exercised without input from the BAWSCA Board. Should it be determined that disputes needs to go to arbitration, BAWSCA will seek direction from the BAWSCA Board and from the newly created Wholesale Customer Committee. As the Council is aware, the BASWCA Board is composed of representatives from each wholesale customer and Councilmember Gomez is currently the City of Milpitas' representative. BAWSCA also established a newly-created Wholesale Customer Committee to be comprised of senior staff from each agency, including Ms. Emma Karlen from Milpitas.

A proposed Resolution (part of the agenda packet) is presented to the City Council which would delegate authority to the BAWSCA Board to initiate, defend, and settle arbitration disputes related to the WSA.

**California Environmental Quality Act (CEQA):** The action is not considered a project under CEQA as there will be no direct, or reasonably foreseeable indirect physical change in the environment.

**Fiscal Impact:** Any cost to fund potential arbitration or arbitration itself would be paid for via the BAWSCA assessments to its member agencies which the City pays via annual membership. Assessments are presented and voted on by the BAWSCA Board of Directors.

**Recommendation:** Adopt a resolution authorizing the Bay Area Water Supply & Conservation Agency to initiate and settle arbitration disputes related to the Water Supply Agreement with the City and County of San Francisco.

- \* 12. **Adopt a Resolution Awarding to and Approving a Contract with Matthew W. Adams, an individual doing business as All-Line Uniform Sales to Furnish Annual Clothing for City Employees in an Amount Not-to-Exceed \$14,434.24 and Authorize the City Manager to Exercise up to four Annual Renewals (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The City's Purchasing Agent worked with City-wide staff to develop specifications for the Invitation to Bid (IFB) soliciting Annual Clothing Requirements for City Employees. On May 27, 2014, IFB #2073 was advertised in the local newspaper, on the City website and through the *Public Purchase* electronic procurement website. On June 20, 2014, three bidders responded to the invitation and a summary of those received (including sales tax, handling, City logo embroidery and silk-screening) is as follows:

Bidder	Annual Amount
All-Line Uniform Sales	\$14,434.24
Uniforms Manufacturing	\$15,348.11
Prolific Screen Printing (current vendor)	\$16,705.42

The initial term of the contract awarded is August 6, 2014 to August 5, 2015. The Option to Extend for renewal years includes a compensation adjustment clause stating that price increases shall not exceed the Consumer Price Index or 3%, whichever is less, and would be exercised by the City Manager (or his designee), subject to appropriation of funds and without further Council approval.

**Fiscal Impact:** None. Funding for this purchase is available from the various departments' operating budget.

**Recommendation:** Adopt a resolution awarding to and approving a contract with Matthew W. Adams, an individual doing business as All-Line Uniform Sales, to furnish annual clothing requirements for city employees in an amount not-to-exceed \$14,434.24, and authorize the City Manager to exercise up to four annual renewal options, subject to appropriation of funds and without further City Council approval.

- \* 13. **Adopt a Resolution Awarding to and Approving a Contract with Jordan C. Lee, an individual doing business as AAA Backflow Prevention Services, for Backflow Testing Certification and Maintenance Repair Services in an Amount Not-to-Exceed \$49,310 and Authorize the City Manager to Exercise up to Three Annual Renewals (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** The City's Purchasing Agent worked with engineering staff to develop specifications for the Invitation for Bids (IFB) soliciting Backflow Testing, Certification and Maintenance Repair Services. On May 27, 2014, IFB #2072 was advertised in the local newspaper, on the City website and through the *Public Purchase* electronic procurement website. On June 20, 2014, three bidders responded to the invitation. Bidders were required to provide unit price bids separately for: 1) testing and certification services for 187 backflow devices owned by the City of Milpitas; 2) as-needed device repairs; and 3) as-needed device replacements. It is anticipated that up to 10% of the backflow devices will fail during the testing and certification process. To assure timely completion of repair and replacement work that may



be required with certification, staff is requesting an additional amount not-to-exceed \$25,000 for that work over a two-year period. A summary of the three bids received is as follows:

Bidder	2 years Testing & Certification Initial Amount	One-Year Testing & Certification Amount	One-Year As-Needed Maintenance Repairs / Replacement Services (Budget)
AAA Backflow Prevention Services	\$24,310	\$12,155	\$12,500
Backflow Prevention Specialists, Inc.	\$28,050	\$14,025	\$12,500
Burr Plumbing, Inc.	\$33,660	\$16,830	\$12,500

The initial two-year contract amount of \$49,310 represents Testing and Certification Services in the amount of \$24,310 and Maintenance Repair Services not-to-exceed the amount of \$25,000 (\$12,500 x 2 years). The two year term is from August 6, 2014 to August 5, 2016. Staff is also requesting the authority for the City Manager (or his designee) to extend the contract for up to three annual renewal options with increases in compensation based on the Consumer Price Index or 3%, whichever is less, without further Council action. The contract to be awarded is also subject to unit price increases for prevailing wage compliance.

**Fiscal Impact:** None. Funding for this purchase is available from the Utilities Engineering operating budget.

**Recommendation:** Adopt a resolution awarding to and approving a contract with Jordan C. Lee, an individual doing business as AAA Backflow Prevention Services, for backflow testing, certification and maintenance repair, in an amount not-to-exceed \$49,310 and authorize the City Manager (or his designee) to exercise up to three annual renewal options.

- \* 14. **Adopt a Resolution to Approve the Sole Source Purchase and Installation of eCompliance Uniform Hazardous Materials Program Consolidated Forms Software for the Initial Not-To-Exceed Amount of \$8,000 and Allow the City Manager to Approve Up to Four Annual Renewals (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** Per state Assembly Bill 2286 adopted September 29, 2008, all hazardous materials regulated businesses are required to electronically submit Uniform Hazardous Materials Program Consolidated Forms information via the California Environmental Reporting System (CERS). Additionally, all local implementing agencies are required to report inspection and enforcement actions, as well as exchange data identified under Title 27 California Code of Regulations (CCR), electronically via the internet to their respective Certified Unified Program Agency (CUPA). Milpitas Fire Department is a participating agency (PA) that reports to the Santa Clara County Environmental Health Department as its CUPA. The Santa Clara County Environmental Health Department has contracted with eCompliance, Inc., a sole source, to develop a software product used to manage the creation, completion, management, and authentication and submittal of all Title 27 CCR data elements. The eCompliance Service Agreement between the City of Milpitas and eCompliance, Inc. is primarily a license to use the finished software product for any and all activities related the Milpitas Fire Department's Hazardous Materials Program in accordance with AB 2286.

Staff therefore recommends that eCompliance, Inc. a California corporation be designated the sole source provider for this product pursuant to Municipal Code section I-2-3.09 Sole Source Procurement. The one time set up fee amount is \$4,500 and the annual renewal fee is \$3,500, subject to annual increases based on the Consumer price index or 5%, which ever is less. The five-year total agreement amount is \$22,000.

**Fiscal Impact:** Funds for this service are available in the Fire Department Operating Budget.

**Recommendation:** Adopt a resolution:

1. Approving the Agreement with eCompliance, Inc. for the purchase and installation of Uniform Hazardous Materials Program Consolidated Forms software for the initial annual amount of \$8,000.
2. Authorizing the City Manager to exercise up to four annual renewal options in the annual amount of \$3,500, with annual fee increases not to exceed the Consumer Price Index or five percent (5%) each year, whichever is less, subject to appropriation of funds and without further City Council action.

**\* 15. Adopt a Resolution Granting Final Acceptance of the City Hall Audio Visual System Upgrade, Project No. 9001 (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** This project was initially accepted on May 21, 2013 and has passed the one-year warranty period. A final inspection of the installed public improvements was made and the work was found to be satisfactory. The project provides for the replacement and upgrade of aging and faulty audio and video equipment within the Council Chambers, control room, and conference rooms at City Hall. Staff recommends the City Council grant final project acceptance of the City Hall Audio Visual System Upgrade, Project No. 9001 and release the contractor's bond.

**Fiscal Impact:** None.

**Recommendation:** Adopt a resolution granting final acceptance of the City Hall Audio Visual System Upgrade, Project No. 9001 and release of the contractor's bond.

**16. Consider Adoption of a Resolution Calling and Giving Notice of the Submission to the Electors of the City of Milpitas at the General Municipal Election to be Held on November 4, 2014 a Ballot Measure Proposal of an Ordinance to Add Chapter 8 to Title III of the Milpitas Municipal Code Related to Issuance of License to Operate a Card Room in Compliance with State Law and Imposing a Card Room Tax at the Rate of 10.5% of Gross Revenues (Staff Contacts: Mike Ogaz, 408-586-3040 and Tom Williams, 408-586-3050)**

**Background:** The City of Milpitas has suffered greatly as a result of three significant economic calamities since 2002. These include the dot.com recession circa 2002; the great recession of 2007-2012 and the retroactive dissolution of the Milpitas Redevelopment Agency as a result of statewide actions to dissolve all redevelopment agencies. In aggregate, the City has lost over \$100 million. Since 2009, the City has laid off a total of 54 employees and decreased the total number of funded employee positions by 132 or approximately 25 percent. Most recently, as a result of the Milpitas Redevelopment Agency dissolution and retroactive provisions of state law, the City of Milpitas paid \$41 million of City revenue to the State Department of Finance and the County of Santa Clara. This redistribution of City funds was reallocated to other taxing entities including approximately \$16 million in payments to the Milpitas Unified School District.

In response to these negative economic impacts, the City of Milpitas has implemented an aggressive economic development effort to improve the City's tax base. This has been accomplished without having to ask the voters of Milpitas to raise taxes to ensure continued City services. As a result, the City has attracted two auto dealerships, several high tech corporate headquarters and retained commercial retail and research and development companies. In a continued effort to build the City's tax base without raising taxes on residents, the City Council adopted an Entertainment Overlay Zone in 2010 as part of its economic development strategy for the McCarthy Ranch area. The Entertainment Overlay Zone boundary is generally west of I-880 to Coyote Creek (City's westerly boundary) and north of Highway 237 to the Newby Island landfill in the City of San Jose.

The Entertainment Overlay Zone calls for a variety of uses including state regulated and licensed casino/card rooms if voter approved and through a Conditional Use Permit granted by the City.

The geographic area for the card room is therefore generally on the western most edge of the City west of I-880 between the sewer treatment plant and the Newby Island landfill which are both located in the City of San Jose - on the City of Milpitas border.

**Discussion:** In order to create the opportunity to attract a card room to the City's Entertainment Overlay Zone, it is recommended the City bring forward to the voters of the City of Milpitas an ordinance to allow gaming in a card room and establish a table tax for any such card room operation. The following summarizes provisions of the proposed ordinance and the economic benefit to the City of Milpitas, if the ordinance is approved by the voters of Milpitas.

- Adoption of 10.5% card room tax resulting in approximately \$8.4 million in general fund revenue.
- Adoption of a \$200 - \$400 employee work permit fee for each individual employee of any card room. Annual revenue is projected at \$300,000.
- The card room tax revenue and employee work permit license fee are sufficient to pay for the City projected direct staffing costs as a result of any card room.
- Staffing requirements may include three additional public safety personnel and a civilian position to administer and regulate card room operations on behalf of the City and in conjunction with state regulators.
- The additional staffing cost is estimated at \$700,000 leaving net revenue for City general fund projected at \$8 million.
- This is a significant annual income stream and will replace the \$7 million in general fund revenue lost as a result of the dissolution of the Redevelopment Agency.
- Any card room will be cost recovery and will be required to reimburse the City for any start up costs.
- Any card room will be required to adhere to all State of California gaming laws including contributions to problem gaming for employees and patrons.

**Fiscal Impact:** Annual general fund revenue of \$8 - \$9 million. Annual recurring costs to the City are estimated at \$700,000. One time election cost per the Santa Clara County Registrar of Voters to place the ballot measure including the ordinance on the November 4, 2014 election ballot is estimated to be \$274,000.

**Recommendation:** Adopt a resolution calling and giving notice of submission to Milpitas electors at the Municipal Election on November 4, 2014 a ballot measure proposal to add Chapter 8 to Title III of the Milpitas Municipal Code related to issuing a license to operate a card room in compliance with state law and imposing a card room tax at the rate of 10.5% of gross revenues.

## **XVIII. AGREEMENTS**

- \* 17. **Approve a Consultant Agreement with BFGC Architects Planners, Inc. for the Milpitas Sports Center Pool Improvements Project No. 3408 in the amount of \$76,000 (Staff Contact: Steve Erickson, 408-586-3301)**

**Background:** The Milpitas Sports Center Pool Improvements, Project No. 3408, is included in the approved 2014-2019 Capital Improvement Program. The work involves repair and resurfacing of the meter, yard and training pools at the Sports Center facility and related improvements including; correcting deficiencies to provide for compliance with Americans with Disabilities Act (ADA) requirements, and other health and safety and code related upgrades, replacement of stairs, ramps, lifeguard stands and diving platforms, upgrade of lighting to more energy efficient LED lights, installing permanent exterior showers on the pool deck, and removal of the wading pool, as budget allows.

Through the City's consultant selection process, BFGC Architects Planners, Inc. doing business as IBI Group Architecture Planning, was selected to provide the design services for the Milpitas

Sports Center Pool Improvements Project. Staff negotiated a scope and fee for these services not to exceed \$76,000.

**Fiscal Impact:** None. Sufficient funds are available in the project budget for these services.

**Recommendation:** Approve a consultant agreement with BFGC Architects Planners, Inc. doing business as IBI Group Architecture Planning in the amount of \$76,000 and for a term to June 30, 2016 for the Milpitas Sports Center Pool Improvements, Project No. 3408.

- \* **18. Approve Amendment No. 3 to the Agreement with Intelligent Technologies and Service, Inc. for Fire Suppression System Inspection, Testing, Maintenance and Repair at City Hall for an Amount Not-to-Exceed \$5,586 (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** On January 5, 2010, Council awarded an agreement for inspection, testing, maintenance and repair of fire suppression systems located at the Police Building, Public Works/Corp. Yard, Community Center, and the Sports Center to Intelligent Technologies and Service, Inc. This was a one year agreement for the period from January 6, 2010 to January 5, 2011 with an option for four additional one-year renewals for a total one year agreement amount of \$5,456.00 and a total five year agreement amount of \$27,280.00. Subsequently, additional monies were added for contingency repairs and service to the Senior Center Kitchen Fire Suppression Hood bringing the total agreement amount to \$43,116.02.

The current contractor for City Hall fire alarm system, Tyco Integrated Security, defaulted on the agreement by failing to provide required services and staff terminated the agreement. Quotes were solicited from local alarm companies to cover the remaining seven months of the Tyco agreement. Intelligent Technologies and Service, Inc. had the lowest overall rates and thus staff recommends amending the existing agreement to include fire alarm system inspection, testing, maintenance and repair of the Edwards ES III system in City Hall for the period August 6, 2014 to February 2, 2015 for \$5,586.00, for a total five year agreement amount of \$48,702.02.

**Fiscal Impact:** None. This is a programmed expense in the Facilities Maintenance operating budget.

**Recommendation:** Approve Amendment No. 3 to the Agreement with Intelligent Technologies and Service, Inc. for fire suppression system inspection, testing, maintenance and repair at City Hall for the not-to-exceed amount of \$5,586.00.

- \* **19. Approve Amendment No. 1 to the Agreement with Peelle Technologies, Inc. Extending the Agreement for Document Imaging Services for Two Years in an Amount Not-to-Exceed \$50,000 Annually (Staff Contact: Chris Schroeder, 408-586-3161)**

**Background:** On February 20, 2013, Council awarded a contract for seventeen months for document imaging services related to the City's records for the Building Inspection Department. The contract was based on a Request for Proposal conducted by the City of Dublin and Peelle Technologies, Inc. was awarded the contract for the period from November 6, 2012 to July 31, 2014. The City's Purchasing Agent previously determined the City of Dublin Request For Proposal process met all of the Purchasing Ordinance requirements for Milpitas Municipal Code Section I-2-3.07 (Piggyback Procurement) and the City Council authorized an agreement for the purchase of imaging and scanning services related to the City's records for the total annual amount of \$85,000 for the term February 20, 2013 to July 31, 2014.

The City of Dublin has extended the term of its agreement with Peelle Technologies, Inc. from July 31, 2014 to July 31, 2016. Milpitas city staff would like to extend the City of Milpitas agreement from July 31, 2014 to July 31, 2016 and to reduce the annual amount of the agreement to \$50,000.

**Fiscal Impact:** None. This is a programmed expense in the Building Inspection operating budget.

**Recommendation:** Approve Amendment No. 1 to the Agreement with Peelle Technologies, Inc. to extend the agreement for document imaging services from July 31, 2014 to July 31, 2016 for the annual not-to-exceed amount of \$50,000.

## **XIX. DEMAND**

- \* 20. Receive Report of Emergency Repair of the Dempsey Road Drive Water Main, Approve a Budget Appropriation from the Water Fund, and Authorize Staff to Pay Repair Work Invoices Totaling \$45,814.89 (Staff Contact: Jeff Moneda, 408-586-3345)**

**Background:** Pursuant to state public contracting law and Council Resolution No. 7779, the Director of Public Works must report all emergency public works repairs to the City Council. On November 24, 2013, the Dempsey Road twelve-inch diameter cast iron water transmission main ruptured near Edsel Drive causing a significant system water pressure drop and outages in the area bounded by Calaveras Blvd. to the north, I-680 to the west, Landess Ave. to the south, and Piedmont Road to the east. Public Works stand-by crew responded and isolated the failed pipe section to restore system pressure except for the isolation zone at the break (between 123 and 500 Dempsey Road). The pipe blow-out caused street flooding and damaged the service lateral and parking lot asphalt at 275 Dempsey Road as well as the street pavement, curb, gutter, and sidewalk.

Due to the size of the repair and the urgent need to restore water supply to the neighborhood, the Director of Public Works authorized Preston Pipelines to make emergency repairs. Preston mobilized a crew and worked with the City crew to restore water service by the following morning. Preston completed the remaining work including removing an abandoned shutoff valve, service lateral repair, private parking lot and driveway repair, street pavement and sidewalk restoration during the week of Thanksgiving and the Monday following. Preston did not immediately submit an invoice for this work due to an accounting error on their part, but discovered the error in an audit and did submit an invoice in the amount of \$45,814.89. The Dempsey Road cast iron water main was installed in 1955 and is reaching the end of its design life. A section located a few hundred feet south failed in October 2012 and another section just north of this one failed in December 2012. Engineering has begun work toward replacement of this water main in a Capital Improvement Program which started design in July 2014.

**Fiscal Impact:** An appropriation from the Water Fund in the amount of \$45,814.89 is needed because there are not sufficient funds in Public Works FY 2013-14 operating budget for this emergency work.

**Recommendations:**

1. Receive this report of Dempsey Road water main emergency repair work from the Public Works Director and authorize staff to pay invoice in the amount of \$45,814.89.
2. Approve a budget appropriation in the amount of \$45,814.89 from the Water Fund to the Public Works FY 2013-14 operating budget.

## **XX. JOINT MEETING OF THE CITY OF MILPITAS, MILPITAS HOUSING AUTHORITY, AND MILPITAS ECONOMIC DEVELOPMENT CORPORATION**

1. Call to Order/Roll by the Mayor/Chair
2. Approval of Agenda/Consent Calendar
- \* 3. Adopt a Joint Resolution of the Housing Authority, the Economic Development Corporation and the City of Milpitas Authorizing Conveyance of Certain Real Property to**

**the City of Milpitas for Public and Economic Development Purposes and Acceptance of those Conveyances by the City (Staff Contact: Emma Karlen, 408-586-3145)**

**Background:** On June 17, 2014, the City of Milpitas, the Milpitas Housing Authority (MHA) and the Milpitas Economic Development (MEDC) entered into a Settlement Agreement with the County of Santa Clara, the State Controller and the State Department of Finance (DOF) regarding the transfer of assets of the former Redevelopment Agency (RDA). The Settlement Agreement allows the retention of the McCandless property (APNs 086-41-016, 086-41-017 and 086-41-018) by the MEDC and determines that the property located at 1452-1474 South Main Street (APNs 086-22-029 and 086-22-030) is not subject to the housing –related provisions of the Community Redevelopment Law and the Dissolution Legislation. Since the City’s General Fund has already paid the County Auditor-Controller for these two properties, staff recommends conveyance of these two properties to the City for public and economic development purposes. In addition, AB 1484 retroactively determined that MEDC is not an independent entity for the purpose of asset transfer and therefore for that additional reason it is appropriate that McCandless and South Main properties be in City hands.

The Settlement Agreement amount also included the repayment of loans from the Transit Area Impact Fee Fund. The City’s Transit Area Impact Fee Fund borrowed \$8,629,161 from the former Redevelopment Agency to fund infrastructure needs within the Transit Area. The expectation was the RDA would be repaid when the Transit Area Impact Fee Fund collected sufficient impact fees from the developers. The loan receivable was subsequently transferred to the MEDC. Unfortunately, the DOF decided that the loans should be demanded immediately and the funds have to be remitted as part of the settlement. The outstanding amount of the loans including principal and interest was \$9,793,396. To repay the entire balance, the Transit Area Impact Fee Fund needs to obtain a temporary interfund loan of \$5,000,000 from the 2% TOT until the Transit Area Impact Fee Fund collects sufficient impact fees from the developers.

There were three capital projects funded by the MEDC that were disallowed by the DOF because the contracts were committed with the contractors after the RDA was dissolved. These projects would be funded by the General Government CIP Fund. The total funding for the three projects was \$1,609,208. There are sufficient funds in the General Government CIP Fund for this purpose. This is all part of the settlement payment and is reported to the City Council for information only.

**Fiscal Impact:** None. The City already remitted money to the County of Santa Clara Auditor-Controller as part of the Settlement Agreement.

**Recommendations:**

1. Adopt a joint resolution of the City Council of the City of Milpitas, the Commission of the Milpitas Housing Authority, and the Board of the Economic Development Corporation authorizing conveyance of certain real property to the City of Milpitas for public and economic development purposes and acceptance of those conveyances by the City.
2. Approve an interfund loan of \$5,000,000 from the 2% Transient Occupancy Tax Fund to the Transit Area Impact Fee Fund.

**4. Adjourn Joint Meeting**

**XXI. ADJOURNMENT**

**NEXT REGULARLY SCHEDULED COUNCIL MEETING  
TUESDAY, AUGUST 19, 2014**

**Draft MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Regular Meeting of Milpitas City Council  
**Date:** Tuesday, June 17, 2014  
**Time:** 6:00 PM Closed Session / 7:00 PM Open  
**Location:** Council Chambers, Milpitas City Hall,  
455 East Calaveras Blvd., Milpitas

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**CALL TO ORDER**

Mayor Esteves called the meeting to order at 6:00 PM. The City Clerk noted the roll.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Giordano and Montano

**ABSENT:** Councilmember Gomez was absent at roll call. He arrived for the Closed Session at 6:14 PM.

**CLOSED SESSION**

City Council convened in Closed Session to discuss litigation and labor negotiations.

City Council then convened in Open Session at 7:02 PM.

**ANNOUNCEMENT**

None out of Closed Session.

**PLEDGE**

Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.

**MEETING MINUTES**

Motion: to approve the minutes of the June 3, 2014 City Council meeting

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

**SCHEDULE OF MEETINGS**

Motion: to approve Council Calendars/Schedule of Meetings for June and July 2014

Councilmember Giordano noted there were no Council meetings scheduled in July.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**PRESENTATION**

Mayor Esteves presented the following:

- Proclaimed June 21, 2014 as *Iglesia Ni Cristo Day* in Milpitas, upon the church's 100 years as a congregation
- Proclaimed July 2014 as "*Parks and Recreation Month*" in the City of Milpitas
- Commended student Alexa Cacao, outstanding diver and Milpitas High graduate
- Commended student Sabrina Pham, Milpitas High graduate and recycler
- Recognized a student from Belgium - Corentin Demoitie, a Rotary International Youth Exchange Program participant at Milpitas High School during the past school year

**PUBLIC FORUM**

**Bill Ferguson**, Milpitas resident, attended a meeting last week of representatives of both the School Board and the City Council. He felt the City and School District had the same interests, in terms of the need for a new school and the constituents were the same. He encouraged an agreement be reached between the two governments.

**Patti Joki**, Pleasanton resident and retired Milpitas Fire Marshal, along with Scott Brown and Michael Lopez, also retired from Milpitas Fire Department, addressed the Council about a letter they had received from the City concerning a 1% retiree dependent fund. They described criteria required to participate in this fund, their contributions toward this fund, its depletion and reimbursement for retiree medical costs. The three retirees sought assistance to come to resolution on what the City's letter demanded of them.

Councilmember Gomez asked for Ms. Joki to email the letter to him, which he had not previously received.

**Robert Marini**, Milpitas resident, commented about Councilmembers' pay and benefits. He also referred to notice given to residents about rates and utilities.

## **ANNOUNCEMENTS**

Vice Mayor Polanski reported that she, Mayor Esteves, School Board President Marsha Grilli and Board member Danny Lau met last week on Thursday for a discussion. City Manager Tom Williams and she clarified the distinct government entities, with separate elected officials.

Mayor Esteves announced that a Buddhist Foundation was having a Health Fair at their office on Sunday, June 22 from 9 AM to 3 PM at 175 Dempsey Road in Milpitas.

## **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts or contributions were reported.

## **APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5  
NOES: 0

## **CONSENT CALENDAR**

Motion: to approve the Consent Calendar (items noted with \*asterisk), as amended

Mayor Esteves requested to remove agenda item No. 25 from consent, to approve a lawsuit settlement regarding the former Redevelopment Agency.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

- \* 3. Building Inspectors  
Approved and authorized the developers' requests for employment of three Temporary Building Inspectors.  
Approved a budget appropriation of \$485,727 into the Building and Safety Department's budget for fiscal year 2014-15.
- \* 5. Ordinance No. 164.3  
Waived the second reading and adopted Ordinance No. 164.3 amending the Milpitas Municipal Code relating to the Schedule of Fees and Service Charges.
- \* 6. Resolution  
Adopted Resolution No. 8383 granting final acceptance of the Abel Street Transit Connection Project No. 4260, Federal Aid Project No. CML 5314 (003) and released the contractor's bond.
- \* 7. Resolution  
Adopted Resolution No. 8384 approving Amendment No. 2 to the Agreement with Tecogen, Inc. in the annual not-to-exceed amount of \$15,500 for the term from July 1, 2014 to June 30, 2019 in accordance with Milpitas Municipal Code Section I-2-3.09 (Sole Source Procurement).



- \* 8. Resolution
  - 1. Adopted Resolution No. 8385 annexing real properties located within Final Tract Map No. 10037 and Final Tract Map No. 10281 into Community Facilities District 2008-1.
  - 2. Approved the Subdivision Improvement Agreement between the City of Milpitas and Milpitas Station (San Jose) Venture, LLLP for public improvements associated with Final Tract Map No. 10037 (Milpitas Station Master Map) and Final Tract Map No. 10281 (Milpitas Station Phase 1).
  - 3. Approved the Fee Credit Agreement between the City of Milpitas and Milpitas Station (San Jose) Venture, LLLP for fee credits associated with the TASP park land dedication and S. Milpitas Blvd. Improvements.
  - 4. Approved the Final Tract Map No. 10037 (Milpitas Station Master Map), Final Tract Map No. 10281 (Milpitas Station Phase 1), and Public Improvement Plans 2-1164 and 2-1183 (construction documents for the associated public improvements).
  
- \* 9. Resolution
 

Adopted Resolution No. 8386 granting initial acceptance of public improvements for Robson Homes, Tract 10077, Project No. 2653 and a reduction of the performance bond.
  
- \*10. Resolution
 

Adopted Resolution No. 8387 revising the Interfund Advance or Loan Policy.
  
- \*11. Resolution
 

Adopted Resolution No. 8388 awarding a construction contract to O'Grady Paving, Inc. and authorizing the City Manager to execute the contract for Street Resurfacing 2015, Projects No. 4275 and No. 3412, in the amount of \$3,305,360; and, authorized the Public Works Director to negotiate and execute change orders for the Street Resurfacing 2015 project in the cumulate amount not to exceed \$500,000.
  
- \*12. Resolution
 

Adopted Resolution No. 8389 transferring a total of \$159.89 in unclaimed checks, per the list of checks generated by the City's Finance department, into the General Fund in accordance with Standard Operating Procedure No. 26-1.
  
- \*13. Resolution
 

Adopted Resolution No. 8390 approving Non-Exclusive Collection, Transportation, and Recycling Agreement with Waste Connections of California, Inc. for a three-year term commencing on June 17, 2014 and authorizing the City Manager or designee to extend the agreement for a maximum of two, three-year extensions.
  
- \*14. Resolution
 

Adopted Resolution No. 8391 making sole source findings per Milpitas Municipal Code Section I-2-3.09, approving Amendment No. 3 to the Agreement with Tiburon, Inc. for Software Support and Maintenance for Police Records Management System in the amount of \$55,496 for the term July 1, 2014 to June 30, 2015.  
 Authorized the City Manager or designee to extend the agreement on an annual basis for up to four additional years with an annual increase of up to 5%, subject to Council appropriation of funds and without further City Council action. Also authorized the City Manager to grant increases according to the agreement without further Council action.
  
- \*15. Burke, Williams amendment
 

Approved Amendment No. 1 to the September 17, 2013 Agreement with Burke, Williams & Sorensen, LLP for outside labor negotiator services.
  
- \*16. Carollo Engineers amendment
 

Approved Amendment No. 1 to the consultant agreement with Carollo Engineers, Inc. to extend the term to June 30, 2015 for the Curtis Well Project No. 7076.
  
- \*17. Amend Agreements with Dispatcher
 

Approved the First Amendment to the consulting agreements with Linda Trudeau and Healani Maloney for public safety dispatching service.
  
- \*18. Otis Elevator Co. amendment
 

Approved Amendment No. 1 to the agreement with Otis Elevator Company for maintenance service on various City of Milpitas elevators for the annual amount not-to-exceed \$30,000 for the period beginning July 1, 2014 and ending on December 6, 2016.
  
- \*19. CSG Amendment
 

Authorized the City Manager to execute Amendment No. 2 to the agreement with CSG for fire inspection and plan review services for a total amount-not-to-exceed \$163,200 for Fiscal Year 2014-15, and extend the agreement to June 30, 2015.

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| *20. Amend Agreement with Santa Clara VTA            | <p>1. Approved Amendment No. 6 to the Master Agreement with Santa Clara Valley Transportation Authority related to the Silicon Valley Rapid Transit Program Berryessa Extension (BART) Project to extend the term to September 30, 2015 and increase the agreement amount by \$1,696,300.</p> <p>2. Approved a budget appropriation of \$650,000 to Project No. 4265-BART extension coordination and planning in the CIP.</p> |
| *21. HMM Engineering Amendment                       | <p>Approved Amendment No. 4 to the Agreement with HMM Engineers to extend the term from June 30, 2014 to June 30, 2017 for the Dixon Landing Road/I-880 Interchange Right of Way project at no additional cost to the City.</p>   |
| *22. Excess Workers' Compensation Insurance          | <p>Authorized the City Manager to pay Brown &amp; Brown of California the premium rate of \$126,878 and approved acceptance of Safety National Casualty Corporation as provider of the City's excess workers' compensation insurance for FY 2014-15.</p>  |
| *23. Authorize Bids                                  | <p>Approved plans and specifications for Project No. 3402, McCarthy Boulevard Landscape &amp; Lighting Improvements, and authorized advertisement for bid proposals.</p>  |
| *24. Agreement with RMC Water and Environment        | <p>Approved an agreement with RMC Water and Environment in the amount of \$900,000 and for a term to February 28, 2017 for the Dempsey Road Water Line Replacement, East Segment Two of the Seismic Waterline "Los Coches Back Bone," Abel Street Pipe Line Extension, and Dempsey Road Storm Drain Replacement, Projects No. 7118, No. 7100, No. 7117 and No. 3709.</p>  |
| *26. Settle Claim Through ABAG PLAN                  | <p>Authorized a claim settlement with claimant Shah through ABAG PLAN for an amount not to exceed \$95,000.</p>   |
| *27. Pay Invoices to Cayenta and Peelle Technologies | <p>Authorized the payment for annual support and maintenance to two vendors: Cayenta (Financial System) in the amount of \$141,448.26 and Peelle Technologies (Document Management) in the amount of \$23,144.00.</p>   |
| *28. Emergency Repair Work                           | <p>Received a report from the Public Works Director of emergency repair of the Milpitas Police/Public Works Building, Project No. 3410, and authorized payment of invoices.</p>   |

## **PUBLIC HEARING**

- |  |   |
|--|---|
| <p><b>1.</b> Citation II Lago Vista apartments and mixed use development project in Transit Area</p> | <p>Senior Planner Scott Ruhland introduced the development in the Transit Area Specific Plan area at 765 Montague Expressway in Milpitas. Mr. Ruhland noted that three specific exceptions to City regulations were requested, via the Conditional Use Permit for the Council's consideration. Displayed overhead were several slides with the layout, map, and design details for the mixed-use project including 381 apartments on Montague Expressway at Piper Drive, across from the new BART station, with multiple features and modern design elements. The City's parking requirements were met in this development proposal, with allowance for some street parking on site, for 634 total parking spaces.</p> <p>Councilmember Montano inquired about the pedestrian bridge and who would pay for it. Staff replied there was funding for its design and the City had been applying for grant funding for its future construction. Ms. Montano wanted information on design review and whether any Commission considered it. City Manager Williams noted that the bridge concept design was already approved by the Planning Commission and the City Council in the past, while staff was working with Santa Clara Valley Transportation Authority (VTA) on grant funding, with a final design to come back to Council.</p> <p>Lastly, Councilmember Montano asked if there was any type of convenience store in the retail portion. Staff replied that was most likely, according to the developer.</p> <p>Vice Mayor Polanski announced she had met with Citation representatives prior to this meeting. She was excited to see some retail in this mixed use project. She asked about</p> |
|--|---|

utilities underground and crossing underneath Montague, with concern for disruptions with the widening of that road. It was important for residents to know that Montague was not a City street, and some mitigation would be needed when undergrounding was going on during construction.

Councilmember Gomez wanted to know how it was determined who paid for the costs of undergrounding. Staff responded that projects that develop their frontage were responsible for their improvement, so it was the developer's responsibility for the undergrounding needed for this project. Mr. Gomez announced he had met with the applicant. He wondered why the City did not ask VTA to pay toward this needed work partly on their land. Mr. Williams replied further that the in the scope of the project, when the City did not regulate VTA's work, to an extent feasible and cost effective, then VTA was undergrounding. Certain utility lines could be reasonably be undergrounded while some cannot. What the City had land use and aesthetic control over, it did manage those utility placements underground. Mr. Gomez referred to possible sharing of these costs by various entities.

Mayor Esteves asked staff if there was any comment from the Milpitas Unified School District about this project after being notified. Staff replied no. The Mayor noted art pieces were offered by the developer, though it was not a condition of approval. He talked about parking arrangements and discussed some of the tradeoffs for the benefits gained. In future, he did not agree with counting street parking spaces toward the number required in a development proposal and did not want to set a bad precedent.

Mayor Esteves reported that he had met with the developer. He pointed out the planting of Jacaranda trees planned for the project, as accent trees on site, as per those suggested by the City's Community Advisory Commission.

Mr. Ruhland held up a letter of support he received on this date for the Council, from the Santa Clara Housing Action Coalition. Mayor Esteves noted a letter of support for this project had arrived from the Chamber of Commerce, too.

Mayor Esteves asked the applicant if he wished to address the City Council.

Jim Sullivan of SCS Development Company, project developer, was pleased to present the project. He emphasized that parking was negotiated with City staff before going to the Planning Commission, including the location of the trash container, and noted 4 – 6 more parking spaces in garage could be designed, per his architect (due to smaller trash bin). His suggestion was at a couple of key corners could be where the jacarandas might go, and explained where art structures were planned to be installed. Mr. Sullivan highlighted several other features of the proposed development.

Mayor Esteves opened the public hearing for comments.

Robert Marini, Milpitas resident, talked about the water shortage and need to reduce water consumption. The new project meant more people with more water demands and more traffic. Demand for services would increase, as would costs, with no benefit to residents.

Pat Brown, from Newport Beach, represented the Milpitas Station project behind this proposed one, and was very supportive of this project, which met Transit Area Specific Plan goals and objectives.

Voltaire Montemayor, Milpitas resident, supported the project for the improvement of Milpitas. It was a good connection toward the 49ers stadium and would help the mall. It could be a problem for power lines and the undergrounding of utilities.

Rob Means, 1421 Yellowstone resident, said there's a lot to like about this project. The pedestrian overcrossing clearly should be built at the same time as the BART station. Of the more than 600 parking spaces, only four were for electric vehicles. There should be

closer to 1% allocation for electric vehicles, since that that was the trend here in northern California.

(1) Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

Mr. Sullivan was open to building more EV stations in the future at the project site, and anticipated more than the four in the conditions. Higher density housing around the BART station would help the mall and other businesses in that end of city. Condition No. 68 dealt with undergrounding across Montague Expressway, and that undergrounding of power poles was always in the City's interest. He objected only to cost of the undergrounding, since that was not providing power to the site, only for BART actually. He requested to have someone else do it, if possible. His company SCS would build 50% of units in that area of the TASP and would take on an appropriate part of the costs, but maybe that could be shared with other developers.

Mr. Sullivan referred to a letter on the right-of-way acquisition along Montague Expressway, where VTA was in charge of doing the expansion to four lanes in that area and in past year County has expanded to five lanes. There was ongoing negotiation with the County over land in the project area, he reported.

Vice Mayor Polanski referred to water use, now and in the future at the project site. Reclaimed water would be used for irrigation of landscaping. On undergrounding of utilities, her concern was timing per what the County was doing to widen Montague, and what this developer would build when, and others, so a creative solution was needed on the timing of all the construction activity.

Councilmember Giordano felt that electric wires did not even affect Mr. Sullivan's project, so she asked were there other precedent-setting projects that had a similar burden. City Manager Tom Williams noted there were multiple jurisdictions in the area. Perhaps a Memorandum of Understanding with the County Board of Supervisors regarding some of the needs in this area and perhaps include SCVTA. Beautification objectives could be achieved together. Mr. Williams suggested possibly that Development Impact Fees could be collected for some of the undergrounding costs upfront, and then reimburse those back to developers later for any off-site portion or where there was not a nexus established.

Mayor Esteves responded it was good that the applicant was willing to share costs.

Councilmember Montano agreed that there needed to be better communication when sites were developed. The Transit Plan was approved in 2008, and planning should have been done then about some of the utilities issues. Regarding water use, people were not wasting a lot of water with new devices in modern construction whereas older homes were more likely to waste water. This project had a great design, was very good for families, and built near BART.

Mayor Esteves asked about the timing of construction. Mr. Sullivan identified 2016 as likely time when construction would start on this project; meanwhile his company was already underway building over 300 units just north of this site.

Councilmember Montano believed that students in this development would attend Randall Elementary School, and which was not maxed out, as the closest elementary school.

(2) Motion: to adopt Resolution No. 8382 approving Major Vesting Tentative Map No. MT13-0006, Site Development Permit No. SD13-0012, and Conditional Use Permit No. UP13-0011 for the construction of a mixed-used project including 381 apartment dwelling

units, 8,100 square feet of commercial and office space and associated site improvements located at 765 Montague Expressway for Citation II Lago Vista Apartments and mixed-use development in the Transit Area Specific Plan area

Motion/Second: Councilmember Giordano/Councilmember Gomez

The motion included, as discussed, installation of several jacaranda trees, potentially added electric car charging stations as needed, the art piece, additional parking spaces if possible, and working on a possible Memorandum of Understanding on undergrounding of utilities.

Motion carried by a vote of: AYES: 5  
NOES: 0

## REPORT OF COMMITTEE

### 2. Public Art Committee - Public Art Piece at Cardoza Park

Recreation staff Renee Lorentzen described four finalist art projects submitted for the public art project planned at Cardoza Park in Milpitas. These were considered by the Public Art Committee members. Four 3-D models were created for review, and the PAC voted in March, with “The Kicker Kid” as the very strong standout choice above and beyond the other three proposals. Funding for this art project was approved within the FY 2014-15 City budget.

Councilmember Montano inquired further details about the “Millipede” proposal.

Mayor Esteves asked about required maintenance for the first one (Kicker Kid). Staff responded that some maintenance of the windmills would be needed on the top, which was graffiti treated, so it was minimal maintenance.

Robert Marini, Milpitas resident, commented on the height of the soccer art piece.

Motion: to approve the “Kicker Kid” art piece for the Cardoza Park Art Installation project, per the recommendation of the Milpitas Public Art Committee

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

## NEW BUSINESS

### 4. Social Media Presentation

Recreation staff Renee Lorentzen and Stephanie Douglas presented the new Social Media policy for the City via a guidebook created by a city staff team. Social media would serve as a tool for social and community engagement of residents, businesses and visitors with the City.

Councilmembers inquired about the evaluation of the success of this policy, whether there were any costs, the value of this free tool, helpfulness to Commissions, and review by the Smart Team of employees.

Robert Marini, Milpitas resident, thought a good idea would be social media to tell residents what the costs of services were.

Motion: to note receipt of presentation of the City of Milpitas Social Media Guidebook

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5  
NOES: 0

**25. Litigation Settlement in two cases**

City Attorney Michael Ogaz explained to Council that they had an agreement before them for settlement of two major lawsuits. The agreement would resolve and bring closure to disagreements with the State of California and the County of Santa Clara over various issues related to the dissolution of the Milpitas Redevelopment Agency. Mr. Ogaz said the settlement's terms included that the two lawsuits, filed in Sacramento, would be dismissed by all parties and the City would pay \$40,875,908 to the County's auditor-controller for the joint benefit of local taxing entities including the City of Milpitas.

Robert Marini, Milpitas resident, was not clear what the \$40 million was. What did that amount really mean? Mr. Ogaz responded that the City would have to pay that amount, and would then receive part of it back as a taxing entity in the subject area. City Manager Tom Williams further responded it was a retroactive amount that the State and County had been trying to extricate from the City ever since Redevelopment Agency dissolution more than 3.5 years ago.

Rob Means, 1421 Yellowstone, was pleased to see this matter settled, so the City could work out a deal with the School District to get a school built.

Motion: to approve the settlement agreement regarding two lawsuits: County of Santa Clara, et al v. Milpitas Economic Development Corporation, et al. and Successor Agency to the Milpitas Redevelopment Agency, et al v. John Chiang, et al.

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5  
NOES: 0

**ADJOURNMENT**

Mayor/Chair Esteves adjourned the City Council meeting at 9:17 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk*

**DRAFT MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:**                   **Special Joint Meeting of the Successor Agency of  
the former Redevelopment Agency, the  
Economic Development Corporation and the  
Housing Authority Commission**

**Date:**                       **Thursday, June 19, 2014**

**Time:**                      **3:30 PM**

**Location:**               **Milpitas City Hall, Building Conference Room  
455 East Calaveras Blvd., Milpitas**

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**ROLL CALL**

Mayor/Chair Esteves called the meeting to order at 3:35 PM.

**PRESENT:** Mayor/Chair Esteves, Vice Mayor/Vice Chair Polanski, and  
Councilmember Gomez

**ABSENT:** Councilmember Giordano. Councilmember Montano was absent at  
roll call and arrived at 3:39 PM.

**APPROVAL OF AGENDA**

Motion: to approve the agenda

Motion/Second:       Vice Mayor Polanski/Councilmember Gomez

Motion carried by a vote of:                   AYES: 3  
  NOES: 0  
  ABSENT: 2 (Giordano, Montano)

**PUBLIC FORUM**

None.

**ANNOUNCEMENT OF  
CONFLICT OF INTEREST**

None.

**AGREEMENT**

City Attorney Mike Ogaz expressed the need for the three entities to approve the  
settlement agreement regarding lawsuits.

Motion: to approve and ratify the settlement agreement between the parties to  
two lawsuits: County of Santa Clara, et alia versus the Milpitas Economic  
Development Corporation, et alia and Successor Agency to the Milpitas  
Redevelopment Agency, et alia versus John Chiang, et alia

Motion/Second:       Vive Mayor Polanski/Councilmember Gomez

Motion carried by a vote of:                   AYES: 4  
  NOES: 0  
  ABSENT 1 (Giordano)

**ADJOURNMENT**

Mayor/Chair Esteves adjourned the joint meeting of the Successor Agency to  
the former Redevelopment Agency, the Economic Development Corporation,  
and the Housing Authority Commission at 3:40 PM.

*Meeting minutes respectfully submitted by  
Mary Lavelle, City Clerk and Secretary,  
Successor Agency, EDC and Housing Commission*

**DRAFT**

**MEETING MINUTES  
CITY OF MILPITAS**

**Minutes of:** Special Meeting of Milpitas City Council  
**Date:** Thursday, July 3, 2014  
**Time:** 12:30 PM  
**Location:** Milpitas City Hall  
Committee Conference Room, 1<sup>st</sup> floor  
455 East Calaveras Blvd., Milpitas

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**ROLL CALL**

Mayor Esteves called the meeting to order at 12:31 p.m.

**PRESENT:** Mayor Esteves, Vice Mayor Polanski, Councilmembers Indihar Giordano and Montano

**ABSENT:** Councilmember Gomez

**APPROVAL OF AGENDA**

Motion: to approve the agenda, as submitted.

Motion/Second: Councilmember Indihar Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Gomez)

**PUBLIC FORUM**

None.

**ANNOUNCEMENT OF  
CONFLICT OF INTEREST**

City Attorney Ogaz asked the Mayor and Councilmembers if they had any personal conflicts of interest on today's agenda. Mayor Esteves announced he is a Santa Clara Valley Transportation Authority (VTA) Board Member and asked the City Attorney if this would be a conflict. City Attorney Ogaz replied it would not be a conflict in terms of acting on this item today.

**APPOINTMENT OF  
SPECIAL COUNSEL**

City Attorney Ogaz reviewed the recent action taken by VTA against the City. He stated the VTA sought a court order to force the City to issue an encroachment permit that would allow for a full closure of Dixon Landing Road for an eight month period. He added currently there is a partial closure of Dixon Landing Road. City Attorney Ogaz confirmed the judge denied the motion from VTA, and the City prevailed, but VTA may file an appeal. Because the appellant landscape requires more specialization, he thought it would be best handled by an outside firm. Additionally, he stated the City does not know if VTA is going to actually file an appeal, but if it does, staff recommends that Berliner Cohen handle the appeal process for the City. He said the City Attorney's budget could accommodate the cost and no appropriation of money is necessary. City Attorney Ogaz asked the Council to approve the staff recommendation to enter into a contract with Berliner Cohen to handle the appeal and for the contract not-to-exceed \$35,000.

Vice Mayor Polanski asked how long the VTA has to appeal. City Attorney Ogaz replied he believes they have 30 days to appeal.

Councilmember Indihar Giordano inquired if VTA files these types of lawsuits often. City Attorney Ogaz believed it was unprecedented in the BART construction. Councilmember Indihar Giordano was happy the City prevailed and would be in support of hiring special counsel.



City Manager Williams stated VTA indicated a full closure would not impact its overall construction schedule for the opening of the Montague Station. He added when this project went through the Environmental Impact Review, it was only cleared for a partial closure not a full closure.

Councilmember Montano asked why does VTA want the full closure and what are their compelling arguments. City Attorney Ogaz replied VTA's arguments are that full closure would allow pedestrian bicycle safety that cannot be addressed in the partial closure and the roadway width is insufficient, yet these issues were never addressed in the two years leading up to the partial closure. City Attorney Ogaz suspected the problem was lack of proper planning by VTA.

City Manager Williams noted even though the City prevailed in the lawsuit, staff is continuing to work with VTA to mitigate the traffic impacts.

Councilmember Montano stated she did not want full closure and concurs with staff's recommendation.

Mayor Esteves congratulated City staff on the outcome of the lawsuit, stated it was necessary to spend resources to defend the City, and supported staff's recommendation to hire outside counsel.

Vice Mayor Polanski asked how many businesses would be impacted by full closure.

City Manager Williams replied there are approximately 10 to 12 businesses in the immediate area, numerous businesses located on Milpitas Blvd., and also residents in the mobile home parks that would be affected by full closure.

Motion: to approve the appointment of Berliner Cohen as special litigation counsel, if the need arises, in the not-to-exceed amount of \$35,000.

Motion/Second: Councilmember Indihar Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 4  
NOES: 0  
ABSENT: 1 (Gomez)

## **ADJOURNMENT**

Mayor Esteves adjourned the meeting of the City Council at 1:10 p.m.


*Meeting minutes respectfully submitted by  
Kathy Ynegas, Deputy City Clerk*

July 2014						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

September 2014						
S	M	T	W	T	F	S
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

## Council Calendar

### August 2014

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4 10:00 AM-SVRT Program Working Committee (JE) 7:00 PM-Parks, Recreation & Cultural Resources Commission (AP)	5 6:00 PM-Closed Session 7:00 PM-City Council	6 7:30 AM-VTA Northeast Group (JE) 5:30 PM-Veterans Commission (DG) 7:00 PM-Community Advisory Comm. (AG)	7 5:30 PM-VTA Board of Directors (JE)  Milpitas National Night Out	8	9
10	11 6:00 PM-Economic Development Commission (CM)	12	13 7:00 PM-Planning Commission	14 4:00 PM-VTA Policy Advisory Committee (AG) 4:30 PM-Treatment Plant Advisory Committee (JE) (San Jose) 7:00 PM-Youth Advisory Comm. (DG)	15	16 Recognition Ceremony at Milpitas Public Library 10:30 a.m.
17	18 7:00 PM-Telecommunications Commission (AP)	19 6:00 PM-Closed Session 7:00 PM-City Council	20	21 12:00 PM-VTA Admin & Finance Committee (JE)	22	23
24	25	26 1:30 PM-Senior Advisory Commission (JE)	27 7:00 PM-Planning Commission	28 12:00 PM-Terrace Gardens Board of Directors (DG) 5:30 PM-Milpitas Chamber of Commerce Board (DG) 6:00 PM-Sister Cities Commission (CM)	29	30
31						

**Attachment List**

- 1. Hold Public Hearing to Consider Request to Host a Flag Ceremony at City Hall Outside Plaza by Pakistan American Culture Center on August 14, 2014 (Staff Contact: Mary Lavelle, 408-586-3001)**
  - A. Rental Facility Application
  - B. Flag Ceremony Application
  - C. Layout Design for Event
  - D. Milpitas Municipal Code on Flag Ceremony

1-A

City Clerk's Office

JUL - 8 2014

RECEIVED

**CITY OF MILPITAS - RENTAL USE APPLICATION**

Concerns regarding your rental should be directed as follows:

Recreation Services 408-586-3210

(Monday-Thursday, 8:00 a.m.-6:00 p.m., Friday, 8:00 a.m.-5:00 p.m.);

Police Dispatch 408-586-2400 (All Other Hours)

Date of Use 8/14/14 ThursdayName of Group/Organization/Company (responsible for rental) Pakistan American Culture CenterApplicant (person responsible for rental) MOHAMMAD ABOUBAKER, PresidentType of Event (be specific) Flag Raising CeremonyApplicant Address 1639A S Main St City Milpitas Zip 95035Day Phone 510 995-6096 Evening Phone \_\_\_\_\_ E-Mail Address: Admin@PACC-CA.org**TYPE OF RENTAL:****Indoor Facility (Circle One):** MCC MSRC ADOBE MSCRoom(s) City Hall Veterans Flag**Outdoor Facility (Circle One):** Baseball Football Soccer Softball Tennis Courts Picnic Area (Specify) area**Park:** Cardoza<sup>1</sup> Dixon Landing<sup>1</sup> Gill<sup>1</sup> Murphy<sup>1</sup> Hall Other (Specify) \_\_\_\_\_<sup>1</sup>These Parks require a \$250.00 Security Deposit that is only processed should damage to the Park occur. Please provide the following

Credit Card information:

Type of Card: VISA or MasterCardName as appears on credit card: MOHAMMAD ABOUBAKER

Credit Card Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Time you wish to begin set-up 6:30 PM Time function begins 7 PM Time function ends 9 PM\*Is event open to the public? ☒ Yes ☐ No Number of people expected Total 100 (Youth 20 Adults 80)Fundraising event? ☐ Yes ☒ NoWill food or other items be sold and/or charging admission? ☐ Yes ☒ No \*If yes, describe amounts: \_\_\_\_\_Will food be served? ☒ Yes ☐ No Will alcohol be served? ☐ Yes ☒ No \* Will alcohol be sold? ☐ Yes ☒ No

(If I will be selling alcohol at my event, I understand and agree by signing this form to get additional insurance and to obtain an alcohol permit at least 45 days in advance of my event.)

Will there be music? ☐ Yes ☒ No Type (circle one) Band DJ Other \_\_\_\_\_Will there be additional equipment used? ☒ Yes ☐ No If yes, List: P. A System

\* Additional fees and insurance is required

I, the applicant, hereby agree to hold the City of Milpitas and any officer and employee thereof free and harmless for any loss, damage, liability, cost or expense that may arise during or be caused in any way by such use of the facilities of the City of Milpitas. I further agree to furnish such liability or other insurance for the protection of the public and the City of Milpitas, and any officer and employee thereof as the City may require. I agree to reimburse the City of Milpitas for any damage to said facilities arising out of the use herein requested.

If damages, additional maintenance, services, additional rental fees, or cancellation fees need to be assessed, I will be notified and charged appropriately. I understand that the City returns deposits, and pro-rated portions thereof, in the form of a City check. This check will be mailed within 30 days from the rental or cancellation date.

Refunds will not be issued for canceled park reservations. Reservations that cannot be held due to inclement weather will be issued a credit toward a rescheduled reservation. Applicant is responsible for contacting Community Center Office within seven (7) business days to initiate credit. You may reschedule a reservation or receive a credit towards future Recreation programs or facility rentals minus the non-refundable application fee.

By signing this form, I understand and agree to abide by the City's cancellation policy and the Facility Use Rules and Regulations approved by the Milpitas City Council on December 1, 2009.

I hereby certify that all statements made in this application are true and I agree and understand that any misstatement or omission of material fact may cause cancellation of my rental date. By signing this form, I further agree to be bound by the commitments and obligations stated herein.

Signature of Applicant

Date

**FOR OFFICE USE ONLY**

Approved: _____ Denied: _____	Verify Residency _____	PERMIT # / STAFF INITIALS
Insurance Required: Yes _____ No _____	Application Complete _____	
Staff Signature: _____ Date: _____	Applicant Has Paperwork _____	
	Route Copy to Parks _____	

**CITY OF MILPITAS  
POLICY AND APPLICATION FORM  
FOR FLAG CEREMONY**

The City desires to encourage respect and reverence for the flags of the United States of America, the State of California, and the City of Milpitas. For this purpose, flag poles have been erected in the City to allow display of these flags as symbols of the precepts enunciated in the Constitutions of the United States and the State of California.

This application form has been prepared to provide for the orderly conduct of flag ceremonies in the City of Milpitas. At the present time, there are two ceremonial flag poles at the Higuera Adobe. The two poles at Adobe Park are to remain vacant and will be used only for flag ceremonies. One pole will be for the United States Flag and the other pole for the flag of other nations. Flag poles are also situated outside City Hall at 455 E. Calaveras Blvd. Your organization's flag may not be larger than the United States flag. Both flags must be removed at the end of the ceremony.

This application should be submitted to the City Manager's office at least forty-five (45) days prior to the requested ceremony date to allow time to advertise a public hearing before the City Council. All ceremonies must be approved by the City Council. No group shall have more than one (1) flag ceremony per calendar year. All ceremonies should be conducted in accordance with applicable provisions of the United States Code and the California Government Code related to proper display of flags. These code are available online at [www.uscode.house.gov](http://www.uscode.house.gov) and [www.leginfo.ca.gov](http://www.leginfo.ca.gov). The City Clerk may provide paper copy of the appropriate codes upon request also.

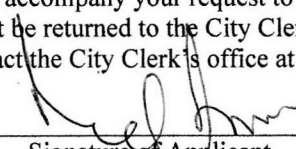
Date of Request: August 14, 2013 Time of Request: 7-9PM  
 Name of Requesting Agency: Pakistani American Culture Center  
 Address: 1639A, S. Main St.  
 City: Milpitas State: CA Zip Code: 95035  
 Contact Person: Mohammad Aboobaker  
 Business Phone: 510 995-6096 Home Phone: \_\_\_\_\_  
 E-mail Address: admin@pacc-ca.org Cell Phone: \_\_\_\_\_

Proposed Activity (please specify the flag to be flown, date of ceremony, and estimated duration):

Pakistani flag ceremony, August 14, 2014, 7-9PM. The activities will include flag ceremony, national anthems of US and Pakistan. Welcome and informational speech by the organization, City and County dignitaries' remarks followed by reception with Pakistani food.

We have Pakistani flag. We may need US flag from the city.

We agree to conduct ourselves in a manner, which encourages respect of the flag of the United States of America. In addition, it is understood that the requesting organization will be responsible for providing any special equipment, including the flag to be flown. A United States flag may be obtained from the City Clerk's office from 8:00 a.m. to 5:00 p.m., Monday through Friday, if one is needed. A written request must accompany your request to ensure that the flag is being released to the authorized individual or group. The United States flag must be returned to the City Clerk's office the next business day after the ceremony between 8:00 a.m. and 5:00 p.m. You should contact the City Clerk's office at 586-3001 if you need additional information or assistance.

  
 \_\_\_\_\_  
 Signature of Applicant

7/10/14

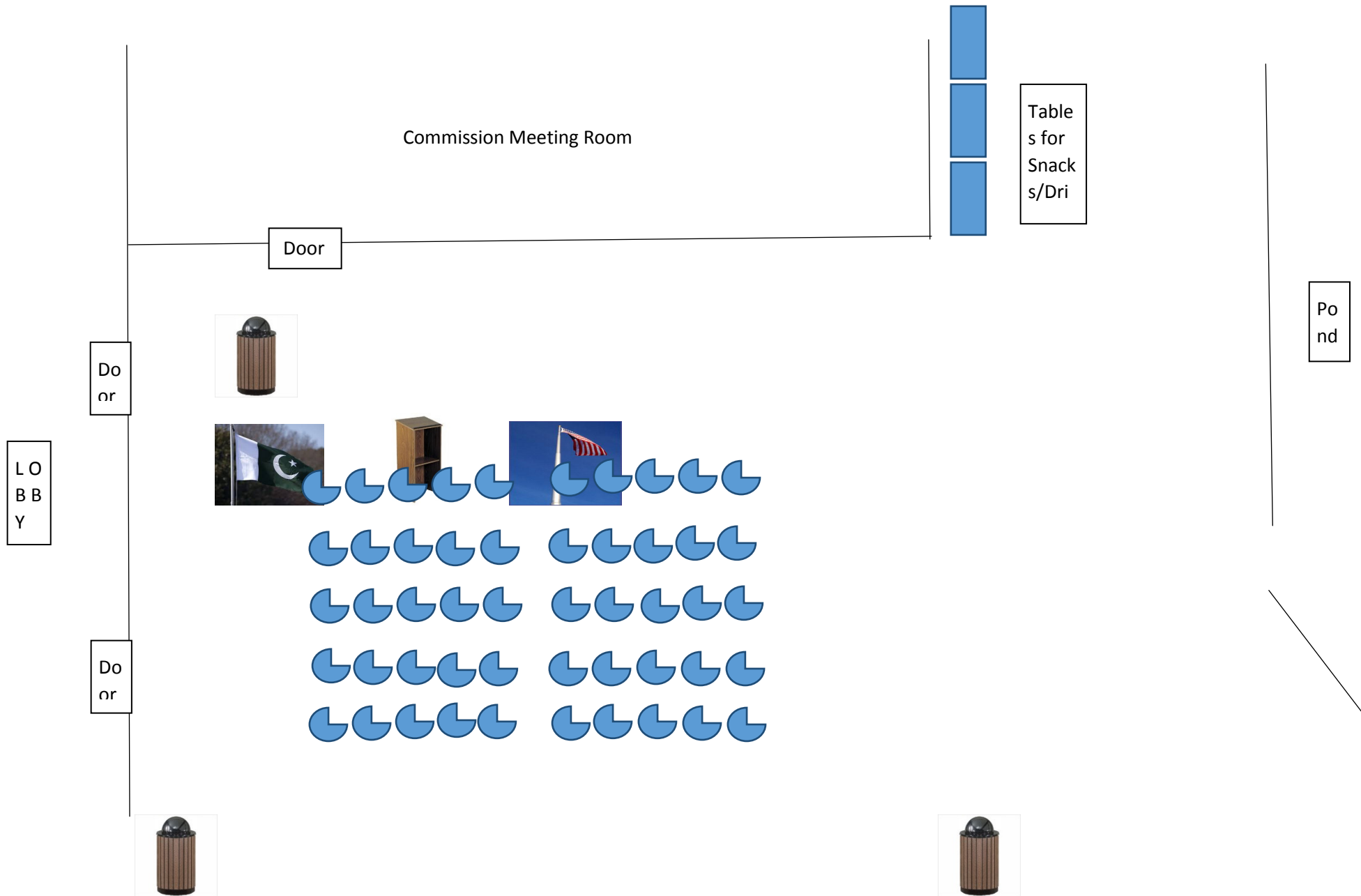
\_\_\_\_\_  
 Date

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 FOR OFFICE USE ONLY:

APPROVED:

CITY COUNCIL: \_\_\_\_\_ APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_

\_\_\_\_\_  
 DATE OF COUNCIL ACTION



Event: **Pakistan Independence Day 14-August Flag Ceremony**

Date: **14-Aug-14 (Thursday)**

Time: **7PM – 9PM**

**Seating Plan**

*Syed Mohsin*

*chairs*



## I-600-2.30 Exception—Sister City Flags and City Council Approved Ground Level Ceremonies

(1)

The flag of the country and that of a city officially recognized by the City Council as a Sister City may be displayed in lieu of the MIA/POW flag and the flag of the State of California on two of the four flag poles located at the rear of City Hall adjacent to the pond during the time of the Sister City delegation's visit to the City of Milpitas.

(2)

The City Council may, after a public hearing, direct City staff to permit the ground level display of a flag of another nation in existence after 1954, only at the following specified locations at the Civic Center complex or the City of Milpitas Community Center:

(1)

City Hall Rotunda

(2)

Area adjacent to pond at City Hall

(3)

City of Milpitas Community Center

(4)

City Council Chambers

Said flag display shall not be permitted on City Hall Display Flag Poles and shall only be permitted on a flagstaff, flagstand or similar device which does not cause the flag height to exceed ten (10) feet.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

## I-600-2.40 City Approval

All ground level ceremonies must be approved by the City Council. Any party intending to conduct a ground level ceremony at one of the designated locations shall submit an application to the Office of the City Manager, on a form approved by the City Council, at least thirty (30) days prior to the requested ceremony date. A public hearing will be held regarding each ground level ceremony application prior to its approval or denial by the City Council.

(Ord. No. 260.1, § 2, 1/17/12; Ord. 260 (part), 6/3/03)

**Attachment List**

- 2. Hold Public Hearing to Adopt Resolution Confirming Weed Abatement Assessments, to be Entered on Tax Assessment Bills (Staff Contact: Albert Zamora, 408-586-3371)**
  - 2-A. Resolution
  - 2-B. 2014 Weed Abatement Program Assessment Report



## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CONFIRMING A WEED ABATEMENT REPORT AND ASSESSMENT LIST TO BE ENTERED ON TAX ASSESSMENT BILL**

**WHEREAS**, on January 7, 2014, the City Council of the City of Milpitas adopted Resolution No. 8329 declaring noxious or dangerous weeds growing upon certain described property to be a public nuisance that must be abated by the removal of the weeds; and

**WHEREAS**, if the public nuisance was not removed from the properties by the owner, the City contracted with the Santa Clara County Department of Agriculture and Environmental Management to remove the weeds and abate the nuisance; and

**WHEREAS**, the Santa Clara County Department of Agriculture and Environmental Management filed a report and weed abatement assessment list with the City Clerk in conformance with Title V, Chapter 202 of the Milpitas Municipal Code; and

**WHEREAS**, on August 5, 2014 a public hearing was held on said report and assessment list, a copy of which is attached hereto as Exhibit A.

**NOW, THEREFORE**, the City Council hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby confirms the 2014 Weed Abatement Assessment by the County of Santa Clara for the City of Milpitas, filed by the Santa Clara County Department of Agriculture and Environmental Management, without modification; and
3. The City Council finds that the said assessment list report is hereby remanded to the Santa Clara County Department of Agriculture and Environmental Management to be entered on the tax assessment rolls as provided by Title V, Chapter 202 of the Milpitas Municipal Code.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**2014 Weed Abatement Program  
Assessment Report  
City of Milpitas**

Exhibit A

	<b>Situs</b>		<b>APN</b>	<b>OWNER ADDRESS</b>				<b>TAX ROLL AMT</b>	<b>TRA</b>
1	7280	Marylinn	022-07-007	Chao, Pei Ling Et Al	1208 W Latimer Av	CAMPBELL	95008-1703	\$1,130.00	12056
2	1735	California	022-37-002	Prentiss Copley Investment Grp	1910 Pacific Ave Ste 400	DALLAS	75201	\$291.00	12003
3		Dixon	026-05-023	Huynh, Quyen Vinh And Lee,	15785 Winchester Bl	MONTE SERENO	95030-3304	\$250.00	12003
4	1880	Milpitas	026-05-024	Nc,aim Developer Ents I	40 N Park Victoria Dr A	MILPITAS	95035-4600	\$250.00	12003
5	51	Dixon	026-05-053	Chang, Carol	67 Berlywood Ln	MILPITAS	95035-2543	\$250.00	12003
6		Bothelo	028-23-017	Union Pacific Railroad	10031 Foothills Blvd	ROSEVILLE	95747	\$1,841.00	12056
7	826	Calaveras Ridge	029-06-031	Dave, Mohini	22356 Hartman Dr	CUPERTINO	95014-1020	\$250.00	12007
8	898	Calaveras Ridge	029-06-038	Panchal, Haresh N. Trustee & Et Al	1669 Monterey Hy	SAN JOSE	95112-6113	\$250.00	12007
9		No Situs	029-07-009	1499 Country Club Drive Llc,	475 S San Antonio Rd	LOS ALTOS	94022-3618	\$250.00	12007
10		No Situs	029-07-010	1499 Country Club Drive Llc,	475 S San Antonio Rd	LOS ALTOS	94022-3618	\$250.00	12007
11		No Situs	029-07-011	1499 Country Club Drive Llc,	475 S San Antonio Rd	LOS ALTOS	94022-3618	\$250.00	12007
12		No Situs	029-07-012	1499 Country Club Drive Llc,	475 S San Antonio Rd	LOS ALTOS	94022-3618	\$250.00	12007
13		No Situs	029-07-013	1499 Country Club Drive Llc,	475 S San Antonio Rd	LOS ALTOS	94022-3618	\$250.00	12007
14	1499	Country Club	029-07-014	1499 Country Club Drive Llc,	475 S San Antonio Rd	LOS ALTOS	94022-3618	\$250.00	12007
15	1715	Calaveras	029-25-008	Milpitas Baptist Church,	1715 E Calaveras Bl	MILPITAS	95035-6061	\$250.00	12003
16	1039	Camarillo	029-52-015	Farsi, Parivash O And Farsi, Rostam	1132 Onondaga Way	FREMONT	94539-6737	\$250.00	12018
17	1705	Pebble Beach	029-55-008	Wang, Ying Qiu And Tong, Su Fang	1705 Pebble Beach Ct	MILPITAS	95035-7609	\$41.00	12007
18	519	Vista Ridge	042-30-010	Ghani, Mahmood And Ghani, Editha	519 Vista Ridge Dr	MILPITAS	95035-7217	\$250.00	12007
19	490	Vista Ridge	042-30-022	Wang, Mann Sheue And Wan, Chien	410 Vista Ridge Dr	MILPITAS	95035-7216	\$250.00	12007

Report Date: 7/16/2014

(List Sorted by APN)

Page 1

2-B

# 2014 Weed Abatement Program

Exhibit A

## Assessment Report

### City of Milpitas

Situs			APN	OWNER ADDRESS				TAX ROLL AMT	TRA
20	531	Vista Ridge	042-30-029	Chan, Michael Kwong And Chan,	704 Longfellow Dr	FREMONT	94539	\$250.00	12007
21		(land Only)	086-07-040	200 Serra Way Llc	380 N First St	SAN JOSE	95112	\$250.00	12056
22		Main	086-08-012	Patel, Surendra M And Patel, Ranjan	2061 Darylview Ct	SAN JOSE	95138	\$250.00	12056
23			086-25-018	Union Pacific Railroad	10031 Foothills Blvd	ROSEVILLE	95747	\$4,182.56	12056
24			086-25-020	Woo, Kan J & Lan H	2650 Kelly Av	MC KINLEYVILLE	95519-3378	\$250.00	12056
25		Main	086-27-023	South Main Manor Llc	968 Hanson Ct	MILPITAS	95035-3165	\$925.00	12056
26		Milpitas	086-28-006	Sfpuc Real Estate Section	525 Golden Gate Ave Floor #	SAN FRANCISCO	94102	\$250.00	12003
27		Vista	086-29-005	Union Pacific Railroad	10031 Foothills Blvd	ROSEVILLE	95747	\$3,337.50	12058
28		Yosemite	086-29-047	Union Pacific Railroad	10031 Foothills Blvd	ROSEVILLE	95747	\$1,245.40	12058
29			086-31-003	Union Pacific Railroad	10031 Foothills Blvd	ROSEVILLE	95747	\$3,331.00	12058
30	893	Ames	086-31-007	Talley Alberta M Trustee Etal	8857 Wine Valley Cl	SAN JOSE,	95135-0000	\$41.00	12003
31		Yosemite	086-31-044	Union Pacific Railroad	10031 Foothills Blvd	ROSEVILLE	95747	\$1,461.80	12058
32			086-32-021	Union Pacific Railroad	10031 Foothills Blvd	ROSEVILLE	95747	\$1,841.00	12058
33	1425	Milpitas	086-32-039	Venture Llp,milpitas Station (san	923 N Pennsylvania Av	WINTER PARK	32789	\$250.00	12058
34	2369	Capitol	086-37-004	Dedeaux, Terry Trustee & Et Al	1430 South Eastman Av	LOS ANGELES	90023	\$250.00	12055
35	620	Capitol	086-37-021	Service,dart Transportation	1430 S Eastman Av	LOS ANGELES	90023-4006	\$250.00	12055
36	750	Capitol	086-37-027	Roadway Express Inc	Po Box 471 Tax Dept	AKRON	44309-0471	\$893.00	12055
37		Los Coches	086-39-001	Tri Pointe Homes Inc	19520 Jamboree Rd Ste 200	IRVINE	92612	\$41.00	12058
38	375	Dempsey	088-01-002	Kakkar, Sanjiv	14110 Squirrel Hollow Ln	SARATOGA	95070-5418	\$1,814.20	12058

**2014 Weed Abatement Program  
Assessment Report  
City of Milpitas**

Exhibit A

							TAX ROLL	TRA
Situs			APN	OWNER ADDRESS			AMT	
39	Dempsey		088-04-060	Chang, Wen-i And Chang, Josie	Po Box 422	LOS ALTOS	94023	\$2,335.60 12058
40	Park Victoria		088-04-062	Chang, Josie And Chang, Wen-i	Po Box 422	LOS ALTOS		\$1,414.40 12058
41	Dempsey		088-04-076	Chang, Wen-i And Chang, Josie	Po Box 422	LOS ALTOS	94023	\$1,245.40 12058
42	Old Piedmont		092-34-008	Old Piedmont Development Inc,	456 Montgomery St #1410	SAN FRANCISCO	94104-1247	\$580.65 12018
43	1250 Piedmont		092-34-014	Old Piedmont Development Inc,	456 Montgomery St #1410	SAN FRANCISCO	94104-1247	\$672.15 12018
44	250 Piedmont		092-37-024	St.josephs Episcopal Church,	P.o.box 360832	MILPITAS	95036-0832	\$250.00 12024
45	2235 Uridias Ranch		092-37-050	Pak, Jung-ho Trustee	12732 Sundance Ln	CARMEL VALLEY	93924	\$250.00 12054
							<b>TOTAL</b>	<b>\$34,914.66</b>

**PLEASE NOTE:**

This copy of Ordinance No. 288 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

**REGULAR**

**NUMBER: 288**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
AMENDING CHAPTER 1 OF TITLE I OF THE MILPITAS MUNICIPAL CODE  
RELATING TO INSTALLATION OF THE NATIONAL MOTTO, "IN GOD WE  
TRUST" WITHIN CITY COUNCIL CHAMBERS AND OTHER PUBLIC  
BUILDINGS**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## **RECITALS AND FINDINGS:**

**WHEREAS**, “In God We Trust” became the United States national motto on July 30, 1956; and

**WHEREAS**, the words have been used on U.S. currency since 1864; and

**WHEREAS**, the same motto is engraved above the entrance to the Senate Chamber as well as above the Speaker's dais in the House of Representatives; and

**WHEREAS**, the City desires the authority display this patriotic motto in the City Council Chambers and other public buildings as a way to solemnize public occasions and express confidence in our society.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

### **SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

### **SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE I**

A new Section 6 of Chapter 1 of Title I of the Milpitas Municipal Code is hereby added with the text below to read as follows:

#### **Chapter 1 GENERAL PROVISIONS**

##### **Sections:**

- Section 1 - Official Bonds
- Section 2 - City Council Meetings
- Section 3 - Official Seal
- Section 4 - Municipal Code
- Section 5 - Pledge of Allegiance
- Section 6 – National Motto**

##### **Section 6 National Motto**

The City Manager is authorized to install the national motto, “In God We Trust” within the following locations:

- (a) Milpitas City Council Chambers;
- (b) Milpitas City Hall Committee Room;
- (c) Lobbies at the Milpitas Senior Center, Milpitas Community Center, and Milpitas Sports Center; and
- (d) Milpitas Police Department Community Room

### **SECTION 3. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

### **SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.



**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND  
WATER SOLUTIONS INCORPORATED**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), and Water Solutions, Incorporated, a Delaware Corporation ("Consultant") as of August 5, 2014.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on July 31, 2015, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant an amount not to exceed two hundred twenty nine thousand dollars (\$229,000.00) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10) percent shall be retained by the City from each Agreement billing until the completion of the Agreement unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

**2.3 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

**2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

**2.5 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

**2.6 Reimbursable Expenses.** Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

**2.7 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily

completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City for each task set forth in Exhibit A and Exhibit B, and for each optional task set forth in Exhibit A and Exhibit B.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. The insurance documents shall be included as Exhibit C.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability

Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

## **4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions.

**4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.

**4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- 4.3.3 The policy must contain a cross liability clause.
- 4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:
- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
  - b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
  - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
  - d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

#### 4.4 **Requirements for All Policies.**

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and

deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

**4.4.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**4.6 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any



federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity

whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7.       LEGAL REQUIREMENTS.**

- 7.1     **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2     **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3     **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4     **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5     **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

**Section 8.       TERMINATION AND MODIFICATION.**

- 8.1     **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1** Immediate cancellation of the Agreement;
  - 8.6.2** Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and

- 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and,

if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

**10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by Michael Boitnott who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

Water Solutions  
Glenn Reynolds, Principal-in-Charge  
179 West Point Avenue  
Half Moon Bay, California 94019

Any written notice to City shall be sent to:  
Jeff Moneda, Public Works Director/City Engineer  
455 East Calaveras Boulevard  
Milpitas, California 95035

**10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

**10.13 Exhibits.** All exhibits and attachments to exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT  
Water Solutions, Inc.

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Thomas C Williams, City Manager

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**Glenn Reynolds, Principal**

Print Name & Title

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Taxpayer Identification Number

94-3232995

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APPROVED AS TO FORM:

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Michael J. Ogaz, City Attorney

Corporate Entity Number

C2062749

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APPROVED AS TO CONTENT:

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Jeff Moneda, Public Works Director/City Engineer

## EXHIBIT A

### SCOPE OF SERVICES FOR WATER SUPPLY FEASIBILITY STUDY

#### **General Descriptions of Project:**

Milpitas is located at the crossroads of Silicon Valley and is experiencing a boom in growth. Construction of a BART station and high-density housing is underway. The adopted Transit Area Specific Plan calls for a 33% increase in housing units over the next 25 years. The City of Milpitas purchases treated water supply from two wholesalers, San Francisco Public Utilities Commission (SFPUC) and Santa Clara Valley Water District (SCVWD).

Due to a state-wide water supply shortage, SFPUC has requested a 10% reduction in water consumption and SCVWD has requested a 20% reduction. The City is interested in exploring the feasibility of augmenting the available water supply, both permanent and temporary. Alternatives to be studied include but are not limited to: conservation, recycled water expansion, surface water retention, new groundwater wells, acquisition, desalination and storage capacity as additional water supply. The level of detail shall reflect the feasibility of the alternative, i.e. an alternative that is very expensive (\$1 billion) and long duration (20 years) shall have “an order of magnitude” estimation and an alternative that is effective, inexpensive (\$50,000) and short duration for implementation shall have a level of estimation for implementation.

#### **Consultant Team for Projects**

Through the City’s consultant selection process, CONSULTANT has been selected to provide the services for the feasibility study. CONSULTANT agrees to complete each of the task outlined below in strict accordance with this Agreement and subject to City review and approval.

CONSULTANT and the CITY recognize the importance of the need to maintain the CONSULTANT’s key personnel throughout the entire duration of this Agreement. CONSULTANT shall not make any changes to the assigned personnel listed below without City written approval:

#### **Water SolutionsTeam:**

Principal, Glenn Reynolds

Project Engineer, Gus Peterson, PE

Water Systems Engineer, Matthew Huber, EIT

Water Quality Specialist, Kayla Griffin

Contract Water Quality Specialist, Dwayne Franco



**Sub-Consultants:**

Wood Rogers, groundwater production  
180 Grand Ave, #400  
Oakland, CA 94612

Nathan Metcalf, Hanson Bridgett, water rights  
425 Market St, 26<sup>th</sup> floor  
San Francisco, CA 94105

Ulrick and Associates, groundwater hydrology  
19 Donna Marina Wy  
Orinda, CA 94563

**General requirements**

1. CONSULTANT shall coordinate and manage sub-consultants throughout the term of the Agreement.
2. Where applicable: plan sheet size shall be 24x36, plans shall be at reasonable scales, but not smaller than 1"=40' for site, and Civil. Details shall be of a minimum size to easily read and understand the information that is being conveyed.
3. Where applicable: Technical memorandum shall be 8 1/2" by 11". Two final hard signed copies with pdf and MS Office versions (word, excel etc) compatible with CITY personnel's computer are required (email or on diskette as necessary) Draft copies shall be emailed in compatible version to CITY personnel.
4. Where applicable: CONSULTANT shall be responsible for meeting the requirements of the CITY Standards, Outside Agencies, Local, State, and Federal codes and regulations, and CEQA submittal and approval requirements.
5. Where applicable, the CONSULTANT shall design the Project in compliance with latest CITY, State, and Federal Storm Water Pollution Prevention, Stormwater Treatment Requirements "C3" and Erosion Control guidelines. CONSULTANT shall provide Erosion Control Plan details, guidelines and technical specification section for the Contractor to use in preparing the project Storm Water Pollution Prevention Plan "SWPPP" and compliance with the State Notice of Intent "NOI" requirements if the threshold of disturbed area is exceeded.
6. Where applicable, CONSULTANT shall prepare the Project Plans using the CITY's Standard Title Block to be located at the bottom right of each Plan sheet (CITY to provide title block in AutoCAD).

7. Where applicable, Project Specifications shall be prepared using the CITY's standard front end template (CITY to provide in MS Word). CITY also has several Technical Specification Sections, which are also standard that may be used on the project. If CONSULTANT uses CITY provided technical sections the CONSULTANT shall be solely responsible and accountable for all design of the project. All other technical specification sections shall be prepared by the CONSULTANT. The specifications shall be created in conformance with the current industry standard, Construction Specification Institute "CSI" 50 Division format. The technical specifications shall be coordinated with the plans, CITY Standard front end template, and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines. The construction documents shall conform to the applicable: Current California Codes as adopted by the City of Milpitas, and all other applicable local, State and Federal codes, regulations, permit requirements, and conditions necessary for issuance of the necessary permits for construction. The specifications shall include measurement and payment wording. CONSULTANT shall coordinate the inclusion of the technical specifications into the front-end specifications as one packet. CONSULTANT shall provide estimated construction costs in the form of the contractor bid proposal format. Unit cost items shall be used whenever possible. The construction schedule shall be specified in working days or calendar days as approved by CITY.
8. Where applicable, CONSULTANT shall assist the CITY in coordination with utility companies including submittal of all necessary service applications. CONSULTANT shall provide all necessary information requested by utility companies. CONSULTANT shall incorporate utility company comments into the design. CONSULTANT shall incorporate utility company review and approval times into the overall project schedule.
9. Where applicable, CONSULTANT shall obtain all necessary outside agency permits/approvals/clearances on behalf of the CITY in order to construct the improvements, CITY will pay all applicable permit/approval/clearances fees. CONSULTANT shall provide all necessary information requested by outside permitting agencies and generate the necessary documents to obtain the required project permits. CONSULTANT shall incorporate outside permitting agencies comments into the design. CONSULTANT shall incorporate outside agency review and approval times into the overall project schedule.
10. Where applicable, CONSULTANT shall perform all necessary environmental documentation and surveys required to comply with the California Environmental Quality Act (CEQA) on behalf of the CITY in order to construct the improvements, with all additional expenses to be incurred by the CITY.. CONSULTANT shall provide necessary information requested by outside parties and the CITY. CONSULTANT shall incorporate CITY and relevant parties' comments into the design. CONSULTANT shall incorporate time to obtain

environmental permits, clearance review and approvals into the overall project schedule. It is anticipated that this study will not require any CEQA clearance.

11. Where applicable, CONSULTANT shall assist the CITY in obtaining all necessary easements and right-of-way in order to construct the improvements. CONSULTANT shall provide all necessary documentation and plans to obtain the respective easement or right-of-way. CONSULTANT shall incorporate time to obtain easements or right-of-way into the overall project schedule. CITY shall be responsible for all easement and right-of-way negotiations and acquisitions.
12. Where applicable, CONSULTANT shall install Temporary Bench Mark(s) (TBM) that can be used for both the design and construction portions of the project. The TBM shall be referenced on the design plans and tied to the location(s) of the new improvements.
13. Where applicable, Final plans ready for bidding shall be submitted wet signed/stamped hard copy on bond paper and on compact disk (CD) in AutoCAD 2013 or later version and PDF formats.

**Quality Control/Quality Assurance (QC/QA):**

CONSULTANT shall prepare plans, specifications, estimates, calculations, and other documents (such as technical memorandum) with the highest level of quality, free of technical errors and any reasonable grammatical errors. CONSULTANT shall implement and maintain the following minimum quality control procedures during the preparation of plans, specifications, estimates, calculations and all other documents relating to this project:

- Design and calculations are independently checked, corrected and back checked by the CONSULTANT;
- When different disciplines are involved, means to assure that conflicts and misalignments do not exist;
- QC/QA program shall provide for review and assurance of complete coordination and compatibility between the plans, specifications and estimated quantities;
- QC program shall include field reviews and review of all pertinent materials to verify compatibility of design with existing facilities.

CITY reviews of these documents shall not be considered part of the QC/QA program, but are only intended to be for review of scope and to coordinate with other departments. QC/QA, compatibility, workable design and constructability of the design is the CONSULTANT's sole responsibility.

Packages submitted for review by the CITY shall be accompanied by a QA/QC statement signed by a principal within the firm that they have reviewed the package and find that is in compliance with the scope of work.

**DELIVERABLE:**

- Signed QA/QC statement with each technical memorandum.

**Tasks:**

Consultant shall perform each of the tasks set forth below. Each task of the feasibility study shall include an evaluation of the available volume of water, issues to be resolved, order of magnitude description of infrastructure needed, operational and maintenance considerations, possible implementation schedule, costs, benefits, life cycle, and prioritization by life cycle, ease of implementation/schedule, costs, etc. (called implementation plan). The feasibility study shall include these items.

**Task 1: Conservation:** Historical residential per capita water use has dropped from over 100 gallons per day (gpd) in the mid-eighties to approximately 80 gpd ten years later and has held fairly steady since then. The major industrial water users have relocated out of the City. The City promotes the SCVWD water conservation programs and believes the community has participated to some degree. The Consultant shall compare the Milpitas residential per capita values with Santa Clara County and Bay Area averages to determine if additional levels of conservation would be fruitful. The subtasks shall include:

- A. Analyze historical per capita water usage data for readily available/obtainable counties within and outside of the SF Bay Area region.
- B. Fit data to statistical distributions for the determination of statistical parameters and provide accurate comparison among data sets, including graphical illustrations.
- C. Analyze conservation actions and related statistical results for effectiveness to determine applicable methods considering other water retailers.
- D. Optional: Perform Mass Balance (water in equals water out) study
- E. Optional: Conduct customer usage leak detection study (such as irrigation, toilet, etc.)
- F. Optional: Conduct City-wide Home-Use audit of randomly selected representative homes
- G. Optional: Perform study of distribution system using correlator
- H. Optional: Perform study of point of sale water use (and loss) using correlator
- I. Provide potential examples of conservation methods (irrigation, toilets, system water lost, additional effort of water audit of city parks, etc.) and related implementation plan and summarized in feasibility section below.

**Deliverable:** Technical Memorandum with analysis of all required and optional subtasks authorized by City for Task 1.

**Task 2: Recycled water:** The recycled water system is a land-application solution to a wastewater outfall limitation originally. The wastewater customers have paid for the infrastructure and ongoing operations. The City purchases recycled water from South Bay Water Recycling (SBWR) and serves about 190 customers. One customer is a cooling tower and the remaining are landscape irrigation. The recycled water distribution system resembles a tree and does not have reliability. Twenty years ago SBWR had planned for more loops but these projects have not been constructed since flows are well below the wastewater outfall limitation due to a downturn in the economy. Milpitas is expanding the recycled water distribution system in the Transit Area around the BART station; however this will not improve reliability. The subtasks shall include:

- A. Evaluate the feasibility of converting existing potable landscape irrigation and cooling tower customers to recycled water.
- B. Discuss source of recycled water (treatment plant) related to supply and water quality, including how recycled water is relatively not affected by drought cycles (rainfall patterns).
- C. Evaluate the construction of recycled water fill station for construction activities (compaction and dust control).
- D. Evaluate other possible demands that can be offset by recycled water.
- E. Discuss the concept of a few big user and many small users as they affect the distribution system, ownership vs operational/maintenance responsibility of SBWR system and Milpitas interest in growth of SBWR.
- F. Prepare infrastructure needed to implement recycled water system expansion for the proposed offset.
- G. Discuss SBWR modeling effort to date.
- H. Optional: Prepare preliminary hydraulic model (pressure, velocity, flow, pipe size, pipe length, valve locations with illustration) as part of the expansion.
- I. Provide potential list of customers (irrigation and cooling tower), estimated reductions of consumptions, and related implementation plan and summarized in feasibility section below.

**Deliverable:** Technical Memorandum with analysis of all required and optional subtasks authorized by City in Task 2.

**Task 3: Surface Water Detention:** Several creeks convey storm water runoff through Milpitas to the south bay. The City operates four storm water retention basins. Two contain water year-round. The western side of the City drains to 13 storm pump stations that are needed to lift storm water into the creeks. The Consultant shall evaluate the feasibility of diverting water out of creeks and/or capturing storm runoff and using it for construction (compaction and dust control) and other non-potable purposes. The subtasks shall include:

- A. Discuss percolation and groundwater relation: hydrological recharge.
- B. Prepare design concepts for hydrological recharge.
- C. Prepare concept size of recharge area and preliminary water quality of retention basin, including the creek sources.

- D. Describe oversight and regulatory requirements (such as Fish and Wildlife, Regional Water Quality Control Board, Santa Clara Valley Water District, etc.) for surface water detention facility, including allowable usage capacity.
- E. Discuss ownership, participation/partner aspect.
- F. Optional: Prepare implementation guidelines based on available sources such as Groundwater Recharge Programs of Alameda County Water District and Santa Clara Valley Water District.
- G. Optional: Determine preliminary area, water quality and creek source of potential sites based on historical data.
- H. Provide potential lists of sites, estimated reductions of consumptions, and related implementation plan and summarized in feasibility section below.

Deliverable: Technical Memorandum with analysis of all required and optional subtasks authorized by City in Task 3.

**Task 4:** New Groundwater Wells: The City owns Pinewood Well and Curtis Well. Separate studies are underway (and are not part of this work) to evaluate treatment and introduction of Pinewood Well water into the City's potable water distribution system and non-potable use of Curtis Well. The Consultant shall evaluate the feasibility of constructing additional groundwater wells to augment the City's routine and emergency water supply. The subtasks shall include:

- A. Inspection of existing wells (Pinewood and Curtis) with recommended improvements for operation and regulatory compliance.
- B. Analyze historical hydrological data to determine groundwater sources (hydro-geological modeling) for potential sites (quality and quantity of water).
- C. Identify necessary infrastructure for well operation (piping, pumps, motors, etc.)
- D. Discuss the idea of adding well and pipe system to irrigate City parks and schools.
- E. Provide preliminary operational and maintenance considerations.
- F. Optional: Perform groundwater modeling for sustainable production potential.
- G. Identify preliminary list of regulatory compliance requirement submittals.
- H. Provide potential lists of sites, operational/physical parameters, estimated reductions of consumptions, and related implementation plan and summarized in feasibility section below.

Deliverable: Technical Memorandum with analysis of all required and optional subtasks authorized by City in Task 4.

**Task 5:** Water Rights Acquisition: The City relies on the wholesalers to acquire water rights. The City is interested in understanding the feasibility of independently acquiring water rights. The Consultant shall describe the water right process (include Milpitas current contracts with SFPUC, SCVWD and SBWR). The subtasks shall include:

- A. Discuss water right methods, including banking/transfers, idea of new development being required to obtain its equivalent water rights, etc.
- B. Provide examples of various water rights.

- C. Discuss expansion of inter-tie connections with adjacent water suppliers for temporary/short term conditions.
- D. Identify most practical water right method, and related implementation plan and summarized in feasibility section below.

Deliverable: Technical Memorandum with analysis of all subtasks in Task 5.

**Task 6:** Desalination appears to be a project that is considered by larger agencies with a significant budget and resources with a unique connection to energy and sewer industries. The subtasks shall include:

- A. Identify preliminary regulatory compliance requirements.
- B. Describe operational/physical parameters of desalination processing.
- C. Identify necessary infrastructure for well operation (piping, pumps, motors, etc.)
- D. Discuss ownership, participation/partner aspect.
- E. Identify current regional projects underway.
- F. Provide operational/physical parameters, estimated reductions of consumptions, and related implementation plan and summarized in feasibility section below.

Deliverable: Technical Memorandum with analysis of all subtasks in Task 6.

**Task 7:** (Additional/larger) water storage capacity is an undertaking by larger agencies with a significant budget and resources. The subtasks shall include:

- A. Discuss sizing (peak shaving vs long term idea: tank, reservoir, underground) and water quality concerns.
- B. Discuss preliminary regulatory compliance requirements.
- C. Discuss groundwater banking.
- D. Discuss local storage in form of above and below ground vs offsite, active storage and recovery plant.
- E. Describe operational/physical parameters with necessary infrastructure for operation.
- F. Provide operational/physical parameters, estimated reductions of consumptions, and related implementation plan and summarized in feasibility section below.

Deliverable: Technical Memorandum with analysis of all sub tasks in Task 7.

**Task 8:** Funding of improvements is needed and is sometimes implied. The subtasks shall include:

- A. Discuss options of funding the improvements (grants, loans, meter rates (volumetric), connection fee, bonds, etc.)
- B. Describe constraints, any advantages and disadvantages of these options.
- C. Provide funding options and summarized in feasibility section below.

Deliverable: Technical Memorandum with analysis of all subtasks in Task 8.

**Task 9: Feasibility Report:** The Consultant shall compile the technical memoranda into a report. The report shall include descriptions of the proposed water supply augmentation measures, available volume of water, order of magnitude description of infrastructure (capital, treatment process required) needed, issues to be resolved, operational and maintenance considerations, possible implementation schedule, effectiveness, reliability, costs, benefits, life cycle with a (decision tree) matrix/table format. The various measures shall be prioritized based upon life cycle, easy of implementation/schedule, costs, effectiveness, etc. The implementation plan shall consist of the items listed above, including a preliminary schedule, costs and required activities/actions. The report shall incorporate the results for all tasks and include executive summary and background language.

Deliverables: Draft report, Final report

**Task 10: Workshop:** The Consultant shall conduct a water supply augmentation workshop with the City Council.

Deliverables: Workshop Materials and attend City Council meeting as required by City.

**Task 11: Meetings:** Consultant shall attend up to four staff coordination meetings and two City Council meetings.

Deliverables: Attend in person meetings as required by staff.

**Task 12: Optional Work:** This optional task is triggered by City staff in the event new information becomes available or additional unforeseen research is desired for an estimated 30 hours.



**Optional work (at City Sole discretion):**

As applicable, CITY will provide written direction and confirm budget for any additional or optional service to be performed. Written authorization must be obtained from the CITY prior to the CONSULTANT beginning additional services/optional work. The CITY will not be responsible for additional work that the CONSULTANT performs prior to receiving written authorization.

Milpitas available data to be provided to Consultant:

1. Cayenta water billing information (customer type and location, consumption, meter usage type (domestic, irrigation))
2. GIS/CAD of street map showing location of existing recycled water pipe, facilities (parks, pump station, etc.)
3. SCVWD conservation participation data
4. Current Milpitas water contracts
5. Master plans & FUMP are on Milpitas website

## EXHIBIT B

### COMPENSATION AND HOURLY RATE SCHEDULE FOR WATER SUPPLY FEASIBILITY STUDY

#### Compensation & Schedule

Task	Description as stated in EXHIBIT A	Base budget *, \$	Optional budget *, \$	Schedule for completion
1a	Conservation	12,300		8 weeks from Notice to Proceed, NTP
1b	Optional (at city discretion): Mass balance study		11,000	Separate NTP, 4 weeks
1c	Optional (at city discretion): Conduct toilet leak detection		25,000	Separate NTP, 4 weeks
1d	Optional (at city discretion): Home use audit		15,000	Separate NTP, 4 weeks
1e	Optional (at city discretion): Distribution correlator system audit		10,000	Separate NTP, 4 weeks
1f	Optional (at city discretion): Point of sale (loss) correlator audit		10,000	Separate NTP, 4 weeks
2a	Recycled water	19,200		8 weeks from NTP
2b	Optional (at city discretion): Modeling		15,000	Separate NTP, 4 weeks
3a	Surface water detention	15,200		15 weeks from NTP
3b	Optional (at city discretion): Prepare implementation guidelines		2,600	Separate NTP, 4 weeks
3c	Optional (at city discretion): Determine preliminary areas		2,600	Separate NTP, 4 weeks
4a	New groundwater wells	15,000		8 weeks from NTP
4b	Optional (at city discretion): Groundwater production potential		25,000	Separate NTP, 8 weeks
5	Water rights acquisition	10,400		10 weeks from NTP
6	Desalination	9,800		11 weeks from NTP
7	Water storage capacity	5,800		13 weeks from NTP
8	Funding	2,600		8 weeks from NTP
9	Feasibility	11,000		18 weeks from NTP

10	Workshop	1,300		19 weeks from NTP
11	Meetings	5,200		N/A
12	Optional (unforeseen) Contingency work (at city discretion):		5,000	N/a
	Base work subtotal	107,800		N/A
	Optional subtotal		121,200	N/A
	Total	229,000		N/A

\* budget, not to exceed amount is based on time and material  
Reimbursables include workshop material and sub-consultant fee

N/A Not applicable  
N/a Not available

#### Hourly Rate (\$)

Principal	200
Engineer	162
Graphics	85
Hydrogeologist**	176
Attorney**	313.50

\*\*Rates include 10% mark up for subconsultants

## **EXHIBIT C**

### **INSURANCE CERTIFICATES PLACEHOLDER FOR WATER SUPPLY FEASIBILITY STUDY**

City of Milpitas, California

**BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	400-2970	\$ 229,000	400-416-4237	\$ 229,000
<input type="checkbox"/> Budget Transfer				

**Explain the reason for the budget change:**

**Background:** The City of Milpitas Utility Engineering Section is responsible for long-term planning and procurement of water, sewer, and trash services. Long-term water supply planning is based upon average flow generation factors for various zoning types, such as single family and commercial. The 2009 Water Master Plan Update notes that normal and maximum day demands at build-out including the Transit Area Specific Plan (TASP) to be 17.4 and 31.1 million gallons per day (mgd), respectively. Milpitas currently uses an average of 10.0 mgd (residential average of 63 gallons per day per person), which is beginning to increase from the low of 9.9 mgd for fiscal year 2010/11. More than 1,300 dwelling units are currently under construction, with another 950 dwelling units expected to break ground shortly. Water demand is expected to increase by 0.5 mgd over the next few years, as these units are occupied.

The proposed work includes a feasibility study to determine benefits, order of magnitude cost, and implementation schedule for additional conservation, recycled water expansion, surface water detention, groundwater, additional water rights, desalination, and water storage.

Through the City's consultant selection process, Water Solutions Inc. was selected to perform the feasibility study. Staff negotiated a scope and fee for these services not to exceed \$229,000. A copy of the proposed consultant agreement is included in the Council packet.

**Fiscal Impact:** \$229,000. This work was unforeseen when the budget was developed for fiscal year 2014/15. A budget appropriation from the Water Fund to the Utility Engineering operating budget is necessary.

**Recommendation:**

1. Approve the Consultant Agreement with Water Solutions Inc. for a feasibility study regarding water supply augmentation for a not-to-exceed amount of \$229,000 for the term from August 5, 2014 to July 31, 2015.
2. Approve a budget appropriation of \$229,000 from the Water Fund to the Utility Engineering Operating Budget.

☒ Check if City Council Approval required.

Meeting Date: August 5, 2014

Requested by:	Department Head: Jeff Moneda, PW Director/City Engineer	Date: July 24, 2014
Reviewed by:	Finance Director: <i>Jane Corpe for Emma Karler</i>	Date: 7/24/14
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:

\*6

City Clerk's Office

**CITY OF MILPITAS  
COMMISSION/COMMITTEE APPLICATION**

PROVIDE COMPLETE INFORMATION (in black ink)

☒ Mr.

☐ Mrs./Ms./Miss

SENIOR ADVISORY Commission  
COMMISSION APPLYING FOR

MAY 12 2014

RECEIVED

Name: First Willy Middle \_\_\_\_\_ Last Wong

Address: Number \_\_\_\_\_ Street (apt. # if needed) \_\_\_\_\_ City & Zip Code \_\_\_\_\_

Telephone Number(s) 408-946-4015 e-mail address WillyW798@gmail.com

Present Employer RETIRED Business Telephone \_\_\_\_\_

Business Address \_\_\_\_\_ Occupation \_\_\_\_\_

Education: If Youth Advisory Commission applicant, indicate your grade/school: \_\_\_\_\_

College, Professional, Vocational, or other schools attended \_\_\_\_\_ Major Subject \_\_\_\_\_ Date \_\_\_\_\_ Degree \_\_\_\_\_

<u>CAL POLY</u>	<u>ENGINEERING</u>		<u>BS</u>

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Signature

5/11/14  
Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Mail, email or drop off your completed application to:

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: [mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov)

STUDENT REP

\*6

# CITY OF MILPITAS COMMISSION/COMMITTEE APPLICATION

City Clerk's Office

MAY 19 2014

**SISTER CITY COMMISSION (STUDENT LIAISON)**  
COMMISSION APPLYING FOR ↑

PROVIDE COMPLETE INFORMATION (in black ink)

☐ Mr.☒ Mrs./Ms./Miss

Name: Mikayla Jade Horyza  
First Middle Last

Telephone Number(s) \_\_\_\_\_ e-mail address \_\_\_\_\_

Present Employer \_\_\_\_\_

Business Telephone \_\_\_\_\_

Business Address \_\_\_\_\_

Occupation \_\_\_\_\_

Education: If Youth Advisory Commission applicant, indicate your grade/school: 9<sup>th</sup> Milpitas High School

College, Professional, Vocational, or other schools attended

Major Subject

Date

Degree


List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date

Name of Organization or Branch of Military

Officer / Member


Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

Worked with Brenda Su, current liaison, on the e-pal project.  
Am enrolled in the Japanese course at Milpitas High for the 2014-2015  
school year.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Stanley Horyza  
parent

Mikayla J. Horyza  
student

Signature

Mikayla J. Horyza

May 17<sup>th</sup> 2014  
Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

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MAR 05 2014

CITY OF MILPITAS  
COMMISSION/COMMITTEE APPLICATION

RECEIVED

VETERAN'S COMMISSION, ALTERNATE MEMBER #2  
COMMISSION APPLYING FOR ↑

PROVIDE COMPLETE INFORMATION (in black ink)

☒ Mr.☐ Mrs./Ms./MissName: ANDRE JAY M. RAMONES  
First Middle LastAddress: Number Street (apt. # if needed) City & Zip Code  
(408) 823-2855 ajramones@gmail.com  
Telephone Number(s) e-mail address  
Present Employer KAISER PERMANENTE (408) 851-8000  
Business Telephone  
Business Address 3800 HOMESTEAD RD, SANTA CLARA RADIATION THERAPIST  
OccupationEducation: If Youth Advisory Commission applicant, indicate your grade/school: \_\_\_\_\_

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree
FOOTHILL COLLEGE	RADIATION THERAPY	2004	ASSOCIATES IN SCIENCE
SANTA CLARA UNIVERSITY	BIOLOGY	1997	BACHELOR IN SCIENCE

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member
2005-PRESENT	U.S. ARMY, NATIONAL GUARD (CALIFORNIA)	SERGEANT FIRST CLASS E7
2001 - 2005	INACTIVE READY RESERVE	SERGEANT E5
1998-2001	U.S. ARMY (ACTIVE DUTY)	SERGEANT E5

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):

I HAVE BEEN A RESIDENT OF MILPITAS SINCE 2009. I HAVE SERVED TWO OVERSEAS COMBAT TOURS (OPERATION IRAQI FREEDOM 2008 & OPERATION ENDURING FREEDOM AFGHANISTAN 2013). BEING A VETERAN MYSELF MAKES ME VERY AWARE OF THE NEEDS OF THE VETERAN COMMUNITY. THE VETERAN POPULATION IS UNIQUE & I WOULD BE HONORED TO BE REPRESENTATIVE/ADVOCATE FOR THEM.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Signature

03 MAR 2014

Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.

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JUN 05 2014

RECEIVED

CITY OF MILPITAS  
COMMISSION/COMMITTEE APPLICATION

Veterans

PROVIDE COMPLETE INFORMATION (in black ink)

COMMISSION APPLYING FOR ↑

☒ Mr.

☐ Mrs./Ms./Miss

Name: Edward John Ackerman  
First Middle Last

Address:                      Number                      Street (apt. # if needed)                      City & Zip Code                     

Telephone Number(s) (408) 946-7176 HM / (408) 888-7097 cell e-mail address Ackerman3@Earthlink.net

Present Employer State of CA / Dept Consumer affairs / Pest Board Business Telephone (408) 263-8841

Business Address 2005 Evergreen St. Ste 1500, Sacramento Occupation Investigator

Education: If Youth Advisory Commission applicant, indicate your grade/school:                     

College, Professional, Vocational, or other schools attended	Major Subject	Date	Degree

List community organizations to which you belong or have belonged (additional information may be attached). If application is for **Veterans Commission**, indicate branch and service in any U.S. military organization (retired or active duty).

Date	Name of Organization or Branch of Military	Officer / Member
68-72	U.S. Navy	
09-14	American Legion Post 873	

Briefly describe the personal qualifications you possess which you believe would be an asset (additional information may be attached):  
I have a friendly outgoing personality that pays attention to detail.  
I have a lot of knowledge in planning, organizational, and  
execution. My experience as a corpsman in both the hospital  
and shipboard makes me aware and empathetic to all veterans.

I have sufficient time to devote to this responsibility and will attend the required meetings if I am appointed to fill a future vacancy. I hereby certify that all statements contained in this application are true.

Edward J. Ackerman  
Signature

05 June 2014  
Date

Appointments to Commissions or Committees are made by the Mayor with the concurrence of the City Council. **Applications not acted upon will expire after one year from the date submitted unless renewed by the applicant.**

NOTE: ALL COMMISSION APPLICATIONS ARE PUBLIC RECORD

Mail, email or drop off your completed application to:

City Clerk, 455 E. Calaveras Blvd., Milpitas, CA 95035, email: [mlavelle@ci.milpitas.ca.gov](mailto:mlavelle@ci.milpitas.ca.gov)

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS IN  
SUPPORT OF A NATIONAL COMMITMENT TO BUILDING AN EARLY LEARNING  
NATION BY THE YEAR 2025**

**WHEREAS**, over the past 238 years major eras in the history of the United States have been frequently marked and recognized by the transference of scientific research, scientific breakthrough and scientific invention into the mainstream of daily life, leading in turn to new growth, enhanced opportunities and innovative change; and

**WHEREAS**, social researchers and sociologists are identifying babies born between 2010 and 2025 as ‘Generation Alpha,’ and are claiming this generation will be the most formally educated generation in history, beginning school earlier and studying for longer than those from previous generations; and

**WHEREAS**, Generation Alpha members will be second only to the Baby Boomer generation in population numbers, consisting of more than 70 million children aged between birth to 15 in the year 2025; and

**WHEREAS**, the latest neuroscience research into child development clearly shows the profound and lasting benefits of every day and in-the-moment interactions between parent or caregiver and child, and that these parent or caregiver/child interactions require no expensive purchases of toys or equipment to achieve these benefits; and

**WHEREAS**, scientific research clearly shows that positive parenting and caregiving in early childhood, starting at birth, is a key contributor to lifelong health and productivity; and

**WHEREAS**, advances in neuroscience, developmental psychology and prevention science provide compelling evidence that the foundation for health or disease is established in early childhood; and

**WHEREAS**, these scientific advances show it is possible for children to achieve their potential as a result of parent and child interactions in the critical brain development years of birth to three; and

**WHEREAS**, high quality early learning in the critical years from birth to three has been proven to reduce placements in special education, reduce grade retention, boost graduation rates, decrease teen pregnancy rates, reduce violent crime, juvenile delinquency and incarceration, and increases the odds of long-term employment; and

**WHEREAS**, we are committed to providing unparalleled opportunities for the children of Generation Alpha so they do not become part of a ‘lost generation’ making this an imperative of moral and national urgency to provide early learning for all children particularly in the critical brain-building years from birth to three.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council supports a movement committed to engaging every community and particularly parents and caregivers in daily brain-building moments with their children, while highlighting the ease and developmental importance supported by the latest scientific research of these conversational moments between adult and child.
3. The City Council supports designating the decade of 2015 – 2025 as an era of community focus in building an Early Learning Nation so, in turn, the children of Generation Alpha emerge equipped and prepared to resolve issues, assume leadership positions, while generating innovative and long-term solutions for previously intractable and seemingly unsolvable challenges.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## **Milpitas Sister Cities Commission**

**July 2014 – June 2015 Work Plan Elements (dates are SCC meetings)**

**Approved at May 22, 2014 SCC Meeting**

### Activities & Projects with Timeline

1. Upcoming MOUs Due
  - a. Tsukuba, expires 9/01/14: June 26 – August 28
  - b. Dagupan, expires 9/15/14: June 26 – August 28
2. E-pal Projects
  - a. Capacity with Milpitas High School: June 26 – August 28
  - b. Coordination: August 28 – September 25; February 26 – April 23
3. Fundraising
  - a. Parameters: August 28 – September 25
  - b. Workshop: October 23
  - c. Event (tentative) Planning: January 22 – May 28
4. Focus Areas / Criteria for Sister City Relationships
  - a. Review and updates, as needed: June 26
  - b. Staff research report: June 26
5. Existing Relationships
  - a. Student Visits to Milpitas (October, MHS Spirit Week)
    - i. 2014 Home-stays and local trip week of Oct. 6: Visits canceled.
    - ii. 2015 Home-stays: Increase student interest in 2014-15 for 2015 visits.
  - b. Officials' Visits to Milpitas (as requested)
    - i. Tours
    - ii. Lead commissioners ask contacts if any planned in FY2014-15
6. Work Plan Review Meetings: January 22, April 23, June 26

### Expectations of Commissioners / Ideas for Community Engagement

- Assign a second commissioner to each sister city
  - Work as a team between meetings
- Lead Commissioners
  - Primary contact to sister city
  - Responsibilities for home-stay coordination
- For each proposed and existing sister city, form a community committee
  - Acts as a touchstone for community support
  - Advises lead commissioners
- Participate in open discussions
  - Meetings are a safe communication zone
  - It's okay to disagree

**CITY OF MILPITAS**  
**INVESTMENT PORTFOLIO STATUS**

**PERCENT OF TOTAL DOLLARS INVESTED AT QUARTER ENDED**

<b><u>TYPE OF SECURITY</u></b>	<b><u>Jun-14</u></b>	<b><u>Mar-14</u></b>	<b><u>Dec-13</u></b>	<b><u>Sep-13</u></b>
LAIF & Money Market	31	39	37	34
Corporate Medium Term Notes	8	8	9	9
Treasury Notes / Bills	13	15	10	12
Federal Agency	48	38	43	44
Negotiable CD's	<1	<1	1	1
	100	100	100	100

	<b><u>Jun-14</u></b>	<b><u>Mar-14</u></b>	<b><u>Dec-13</u></b>	<b><u>Sep-13</u></b>
Market Value	171,637,827	185,718,328	173,242,696	170,293,115
Cost	171,460,765	185,779,819	173,345,984	170,260,176

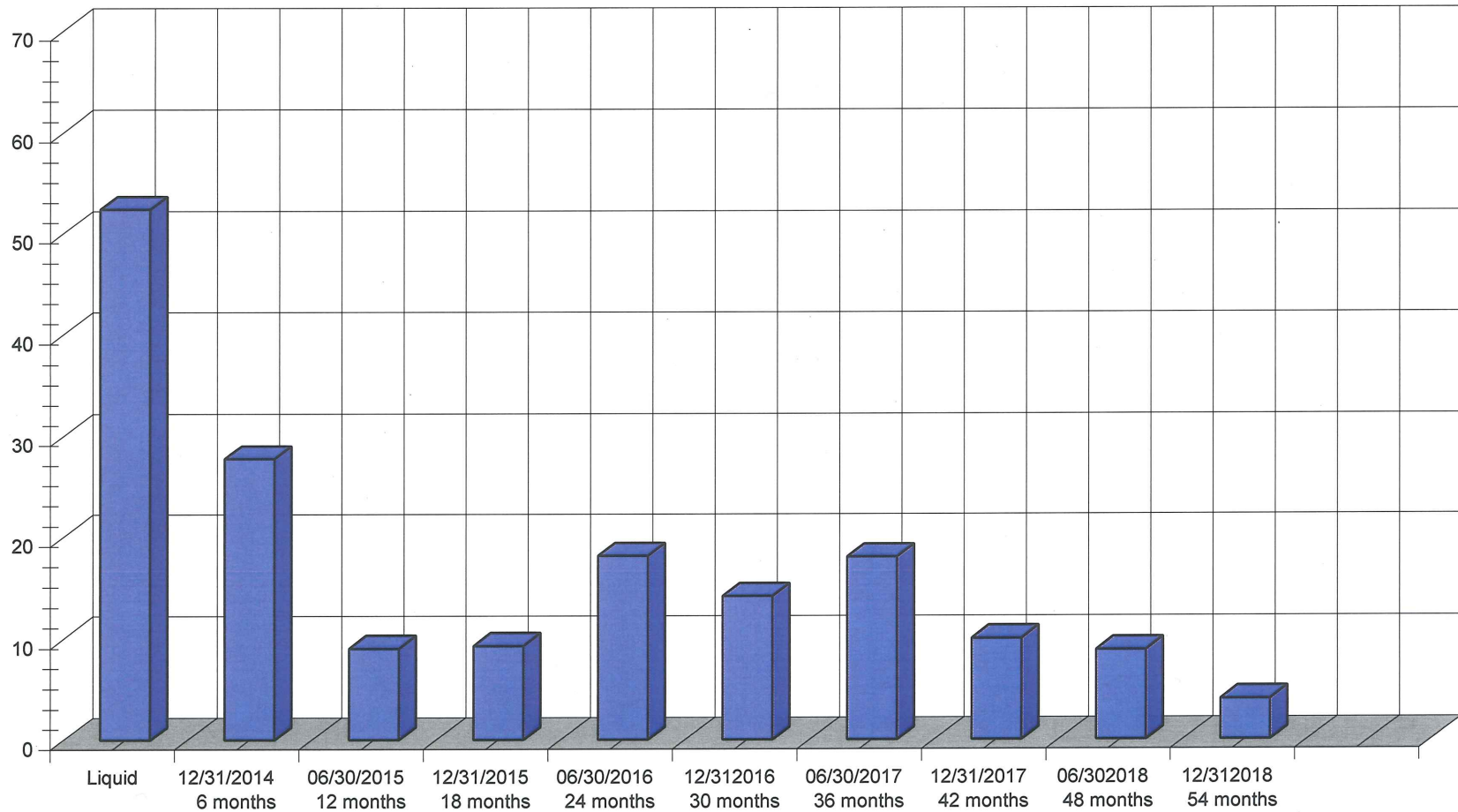
<b><u>Days</u></b>				
Weighted Average Maturity	467	449	516	575

<b><u>Rates</u></b>				
Average Yield	0.56%	0.57%	0.66%	0.67%

<b><u>Benchmarks:</u></b>				
LAIF	0.23%	0.24%	0.26%	0.26%
2 Year Treasury - (12 Month Average)	0.36%	0.33%	0.30%	0.29%

Exhibit 2

**City of Milpitas Investment Portfolio  
Maturity by Six Month Intervals as of 06/30/14**



# City of Milpitas Investment Portfolio Yields Compared to Benchmarks for the Quarters Ended 09/30/11 – 06/30/14

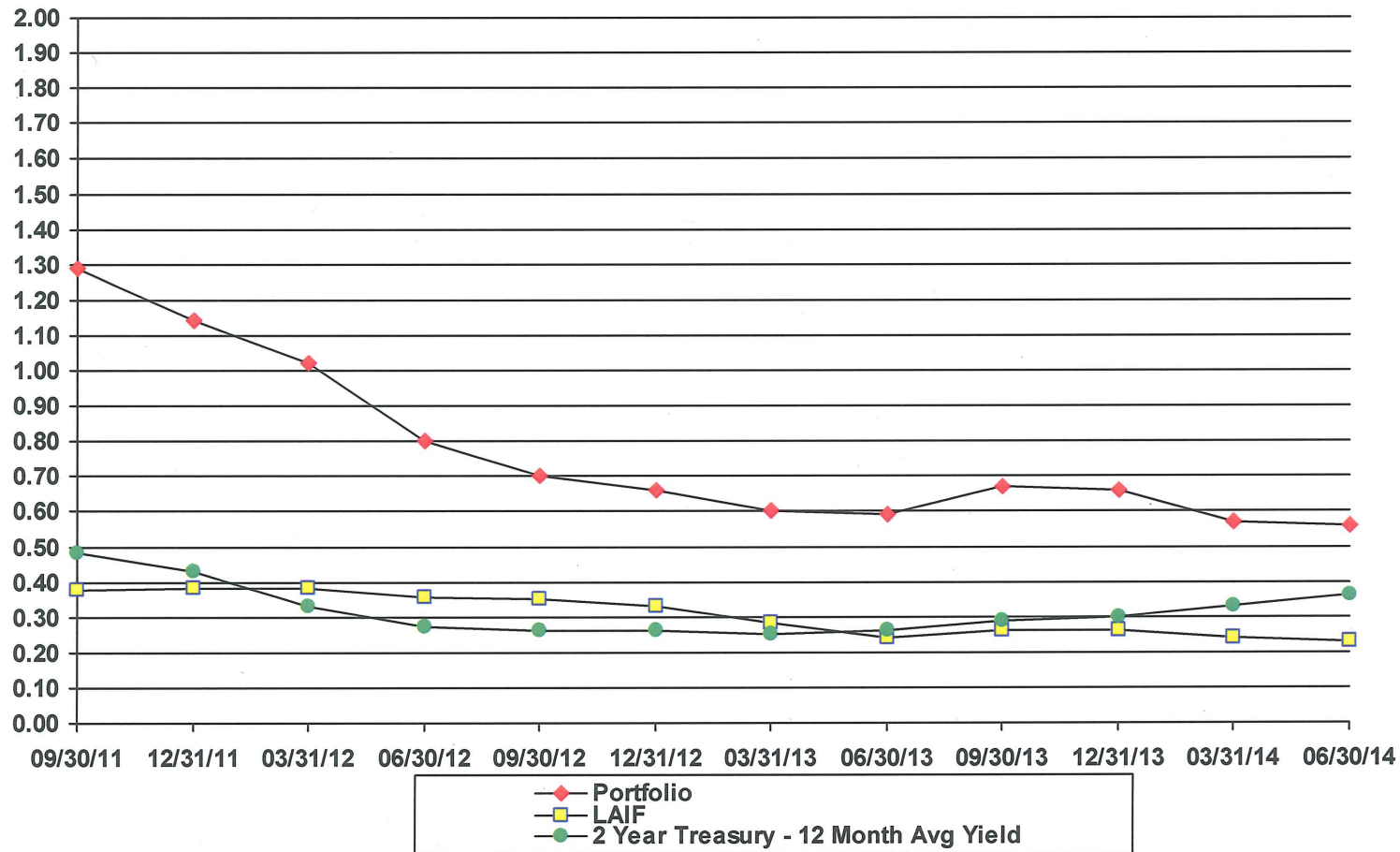


Exhibit 3


**City of Milpitas  
Portfolio Management  
Portfolio Summary  
June 30, 2014**

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Maturity	YTM 360 Equiv.	YTM 365 Equiv.
LAIF	52,400,000.00	52,415,654.50	52,400,000.00	30.56	1	1	0.225	0.228
Money Market Funds	51,463.56	51,463.56	51,463.56	0.03	1	1	0.010	0.010
Corporate Notes	14,000,000.00	14,098,426.25	14,089,048.95	8.22	1,341	710	1.012	1.027
Federal Agency	68,000,000.00	68,088,370.00	68,014,926.14	39.67	1,356	760	0.881	0.893
Federal Agency Discounts	13,700,000.00	13,698,929.50	13,698,631.01	7.99	99	63	0.052	0.053
Treasury Coupon Securities	22,000,000.00	22,015,666.90	21,938,495.40	12.80	1,220	784	0.716	0.726
GNMA	18,199.51	18,614.20	18,199.51	0.01	7,204	995	8.096	8.209
Negotiable CDs -2	1,250,000.00	1,250,702.48	1,250,000.00	0.73	731	156	0.691	0.700
	<b>171,419,663.07</b>	<b>171,637,827.39</b>	<b>171,460,764.57</b>	<b>100.00%</b>	<b>819</b>	<b>467</b>	<b>0.603</b>	<b>0.611</b>

<b>Investments</b>								
<b>Cash</b>								
Passbook/Checking (not included in yield calculations)	3,465,229.87	3,465,229.87	3,465,229.87		1	1	0.010	0.010
<b>Total Cash and Investments</b>	<b>174,884,892.94</b>	<b>175,103,057.26</b>	<b>174,925,994.44</b>		<b>819</b>	<b>467</b>	<b>0.603</b>	<b>0.611</b>

Total Earnings	June 30 Month Ending	Fiscal Year To Date	Fiscal Year Ending
Current Year	93,847.71	1,146,522.69	1,146,522.69
<b>Average Daily Balance</b>	<b>204,751,180.62</b>	<b>186,279,336.36</b>	
<b>Effective Rate of Return</b>	<b>0.56%</b>	<b>0.62%</b>	

To the best of my knowledge, this report accurately reflects all City and RDA pooled investments and is in conformity with all State laws and the City's investment policy. A copy of the policy is available at the office of the City Clerk. This investment program herein shown provides sufficient cash flow liquidity to meet next six months' estimated expenditures.

  
\_\_\_\_\_  
Emma C. Karlen, Director of Finance

7/23/14

Reporting period 06/01/2014-06/30/2014

Run Date: 07/18/2014 - 13:35

Portfolio MILP  
AC  
PM (PRF\_PM1) 7.2.5  
Report Ver. 7.3.1



**City of Milpitas  
Portfolio Management  
Portfolio Details - Investments  
June 30, 2014**

Page 1

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
<b>LAIF</b>												
SYS82000010	82000010	Local Agency Invest. Fd - City			34,000,000.00	34,010,157.50	34,000,000.00	0.228		0.228	1	
SYS97090401	97090401	Local Agency Invest. Fd - MPFA			18,400,000.00	18,405,497.00	18,400,000.00	0.228		0.228	1	
<b>Subtotal and Average</b>			<b>76,490,000.00</b>		<b>52,400,000.00</b>	<b>52,415,654.50</b>	<b>52,400,000.00</b>			<b>0.228</b>	<b>1</b>	
<b>Money Market Funds</b>												
SYS	12020109	Dreyfus Treasury & Agency Fund			51,463.56	51,463.56	51,463.56	0.010	AAA	0.010	1	
<b>Subtotal and Average</b>			<b>4,193,104.89</b>		<b>51,463.56</b>	<b>51,463.56</b>	<b>51,463.56</b>			<b>0.010</b>	<b>1</b>	
<b>Corporate Notes</b>												
78008TXA7	12021001	Royal Bank of Canada		02/10/2012	1,000,000.00	1,003,880.00	1,002,517.21	1.450	AA-	0.680	121	10/30/2014
36962G5M2	12011001	General Electric Capital Corp		01/10/2012	2,000,000.00	2,019,700.00	2,000,801.48	2.150	AA+	2.070	192	01/09/2015
961214BW2	12100201	Westpac Banking Corp		10/02/2012	1,000,000.00	1,007,850.00	1,001,514.48	1.125	AA-	1.000	451	09/25/2015
06366RJH9	12110601	Bank of Montreal		11/06/2012	1,000,000.00	1,005,430.00	1,000,943.06	0.800	A+	0.729	493	11/06/2015
822582AU6	12120601	Shell Int'l Finance BV		12/06/2012	1,000,000.00	1,002,656.25	1,000,961.28	0.625	AA	0.557	521	12/04/2015
38259PAC6	12120602	Google Inc		12/06/2012	1,000,000.00	1,030,200.00	1,027,234.55	2.125	AA	0.660	688	05/19/2016
742718DV8	13051302	Proctor & Gamble Co		05/13/2013	1,000,000.00	1,016,400.00	1,019,230.38	1.450	AA-	0.535	776	08/15/2016
89233P5E2	13052001	Toyota Motor Credit		05/20/2013	1,000,000.00	1,025,830.00	1,025,726.93	2.000	AA-	0.815	807	09/15/2016
88579YAD3	12021401	3M Company		02/14/2012	2,000,000.00	2,035,160.00	2,016,392.94	1.375	AA-	1.000	821	09/29/2016
166764AA8	13060501	Chevron Corporation		06/05/2013	1,000,000.00	995,400.00	997,463.44	1.104	AA	1.180	1,253	12/05/2017
037833AJ9	13051301	Apple Inc		05/13/2013	2,000,000.00	1,955,920.00	1,996,263.20	1.000	AA+	1.050	1,402	05/03/2018
<b>Subtotal and Average</b>			<b>14,091,164.72</b>		<b>14,000,000.00</b>	<b>14,098,426.25</b>	<b>14,089,048.95</b>			<b>1.027</b>	<b>710</b>	
<b>Federal Agency</b>												
313371WB8	10112401	Federal Home Loan Bank		11/24/2010	2,000,000.00	2,001,360.00	2,000,000.00	1.150	AA+	1.150	23	07/24/2014
313374RB8	11072801	Federal Home Loan Bank		07/28/2011	2,000,000.00	2,001,320.00	2,000,000.00	1.000	AA+	1.000	27	07/28/2014
313373XN7	11052701	Federal Home Loan Bank		05/27/2011	3,000,000.00	3,005,430.00	3,000,232.19	1.250	AA+	1.200	58	08/28/2014
313379KQ1	12052901	Federal Home Loan Bank		05/29/2012	2,000,000.00	2,001,000.00	2,000,000.00	0.400	AA+	0.400	59	08/29/2014
3134G2YJ5	12021002	Fed Home Loan Mortgage Corp		02/10/2012	1,000,000.00	1,000,900.00	1,000,172.17	0.500	AA+	0.420	80	09/19/2014
31331JQ55	11020402	Federal Farm Credit Bank		02/04/2011	2,000,000.00	2,005,520.00	1,997,125.57	1.150	AA+	1.714	97	10/06/2014
3133EADP0	12021701	Federal Farm Credit Bank		02/17/2012	2,000,000.00	2,003,720.00	2,000,372.48	0.450	AA+	0.420	231	02/17/2015
3135G0HG1	12020801	Federal Nat'l. Mortgage Assoc		02/08/2012	2,000,000.00	2,003,420.00	1,999,014.67	0.375	AA+	0.445	258	03/16/2015
3135G0LN1	12062801	Federal Nat'l. Mortgage Assoc		06/28/2012	2,000,000.00	2,006,480.00	2,000,000.00	0.500	AA+	0.500	366	07/02/2015
3133EADW5	12021702	Federal Farm Credit Bank		02/17/2012	2,000,000.00	2,006,600.00	2,000,000.00	0.550	AA+	0.550	412	08/17/2015
3133EAQV3	12051501	Federal Farm Credit Bank		05/15/2012	2,000,000.00	2,007,660.00	2,000,000.00	0.550	AA+	0.550	441	09/15/2015
3133ECTC8	13062801	Federal Farm Credit Bank		06/28/2013	2,000,000.00	2,008,060.00	1,998,292.90	0.640	AA+	0.695	576	01/28/2016
313375RN9	12020901	Federal Home Loan Bank		02/09/2012	2,000,000.00	2,017,380.00	2,009,324.05	1.000	AA+	0.720	619	03/11/2016

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CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
<b>Federal Agency</b>												
313375RN9	12062903	Federal Home Loan Bank		06/29/2012	2,000,000.00	2,017,380.00	2,011,699.06	1.000	AA+	0.650	619	03/11/2016
3133EARB6	12062902	Federal Farm Credit Bank		06/29/2012	1,000,000.00	1,006,400.00	1,001,847.15	0.750	AA+	0.650	686	05/17/2016
3133EAUH9	12061401	Federal Farm Credit Bank		06/14/2012	3,000,000.00	3,016,020.00	3,000,000.00	0.750	AA+	0.750	714	06/14/2016
3133EAVQ8	12062901	Federal Farm Credit Bank		06/29/2012	2,000,000.00	2,005,720.00	2,000,000.00	0.800	AA+	0.800	884	12/01/2016
313383FB2	13061901	Federal Home Loan Bank		06/19/2013	2,000,000.00	1,996,860.00	2,000,000.00	0.580	AA+	0.580	902	12/19/2016
3133EDNC2	14061301A	Federal Farm Credit Bank		06/13/2014	1,600,000.00	1,600,272.00	1,600,000.00	0.700	AA+	0.700	927	01/13/2017
3133EDNC2	14061301B	Federal Farm Credit Bank		06/13/2014	400,000.00	400,068.00	400,000.00	0.700	AA+	0.700	927	01/13/2017
3136G1E88	13022702	Federal Nat'l. Mortgage Assoc		02/27/2013	1,000,000.00	997,130.00	1,000,000.00	0.750	AA+	0.750	972	02/27/2017
3133ECT79	13062701	Federal Farm Credit Bank		06/27/2013	2,000,000.00	2,009,340.00	2,000,000.00	1.000	AA+	1.000	974	03/01/2017
3133ECMM3	13042501	Federal Farm Credit Bank		04/25/2013	2,000,000.00	1,994,760.00	2,000,000.00	0.600	AA+	0.600	1,029	04/25/2017
3133ECPA6	13051502	Federal Farm Credit Bank		05/15/2013	2,000,000.00	1,985,420.00	2,000,000.00	0.600	AA+	0.600	1,049	05/15/2017
3134G43S5	13051501	Fed Home Loan Mortgage Corp		05/15/2013	2,000,000.00	1,984,260.00	2,000,000.00	0.650	AA+	0.650	1,049	05/15/2017
3133EDPC0	14062701	Federal Farm Credit Bank		06/27/2014	2,000,000.00	2,013,040.00	2,000,000.00	1.000	AA+	1.000	1,092	06/27/2017
3133EDEB4	14012801	Federal Farm Credit Bank		01/28/2014	2,000,000.00	2,012,280.00	2,000,000.00	1.100	AA+	1.100	1,093	06/28/2017
3133EDKP6	14050101	Federal Farm Credit Bank		05/01/2014	2,000,000.00	2,008,300.00	2,000,000.00	1.070	AA+	1.070	1,158	09/01/2017
3134G3J68	13053001	Fed Home Loan Mortgage Corp		05/30/2013	2,000,000.00	1,979,780.00	1,996,845.90	0.900	AA+	0.950	1,175	09/18/2017
3136G1UP2	13091901	Federal Nat'l. Mortgage Assoc		09/19/2013	1,000,000.00	1,002,790.00	1,000,000.00	1.600	AA+	1.600	1,176	09/19/2017
3133ED3Z3	13100401	Federal Farm Credit Bank		10/04/2013	2,000,000.00	2,017,700.00	2,000,000.00	1.230	AA+	1.230	1,191	10/04/2017
3136G0L58	12101801	Federal Nat'l. Mortgage Assoc		10/18/2012	1,000,000.00	993,400.00	1,000,000.00	1.000	AA+	1.000	1,205	10/18/2017
3135G0UE1	13021401	Federal Nat'l. Mortgage Assoc		02/14/2013	3,000,000.00	2,962,680.00	3,000,000.00	1.000	AA+	1.000	1,324	02/14/2018
3136G1DG1	13022701	Federal Nat'l. Mortgage Assoc		02/27/2013	2,000,000.00	1,979,160.00	2,000,000.00	1.050	AA+	1.050	1,337	02/27/2018
3133ECW75	13080101	Federal Farm Credit Bank		08/01/2013	2,000,000.00	2,028,580.00	2,000,000.00	1.610	AA+	1.610	1,492	08/01/2018
3134G4FY9	13092401	Fed Home Loan Mortgage Corp		09/24/2013	2,000,000.00	2,008,180.00	2,000,000.00	2.000	AA+	2.000	1,546	09/24/2018
<b>Subtotal and Average</b>			<b>70,281,744.23</b>		<b>68,000,000.00</b>	<b>68,088,370.00</b>	<b>68,014,926.14</b>			<b>0.893</b>	<b>760</b>	
<b>Federal Agency Discounts</b>												
313385ZL3	14061902	Federal Home Loan Bank Discoun		06/19/2014	200,000.00	199,998.00	199,997.33	0.030	AA+	0.031	16	07/17/2014
313385A89	14060303	Federal Home Loan Bank Discoun		06/04/2014	800,000.00	799,976.00	799,956.00	0.055	AA+	0.057	36	08/06/2014
313385B88	14060301	Federal Home Loan Bank Discoun		06/04/2014	4,000,000.00	3,999,840.00	3,999,780.00	0.045	AA+	0.046	44	08/14/2014
313385B88	14060302	Federal Home Loan Bank Discoun		06/04/2014	5,000,000.00	4,999,800.00	4,999,725.00	0.045	AA+	0.046	44	08/14/2014
313385B88	14061901	Federal Home Loan Bank Discoun		06/19/2014	300,000.00	299,988.00	299,987.17	0.035	AA+	0.036	44	08/14/2014
313397K75	14031801	Federal Hm Mort Ln Co -Discont		03/18/2014	400,000.00	399,940.00	399,893.00	0.090	AA+	0.093	107	10/16/2014
313385L53	14042401	Federal Home Loan Bank Discoun		04/24/2014	2,000,000.00	1,999,687.50	1,999,591.95	0.065	AA+	0.067	113	10/22/2014
313589R62	14051502	Federal Nat'l Mort Asssoc Disc		05/15/2014	1,000,000.00	999,700.00	999,700.56	0.070	AA+	0.072	154	12/02/2014
<b>Subtotal and Average</b>			<b>12,418,452.21</b>		<b>13,700,000.00</b>	<b>13,698,929.50</b>	<b>13,698,631.01</b>			<b>0.053</b>	<b>63</b>	

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CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity	Maturity Date
<b>Treasury Coupon Securities</b>												
912828SZ4	12062201	United States Treasury Note		06/22/2012	3,000,000.00	3,006,810.00	2,999,285.78	0.375	AA+	0.400	349	06/15/2015
912828UG3	13012801	United States Treasury Note		01/28/2013	3,000,000.00	3,004,687.50	2,998,851.04	0.375	AA+	0.400	563	01/15/2016
912828VC1	13053101	United States Treasury Note		05/31/2013	2,000,000.00	1,994,375.00	1,992,479.17	0.250	AA+	0.452	684	05/15/2016
912828VG2	13062401	United States Treasury Note		06/24/2013	2,000,000.00	2,002,500.00	1,993,113.93	0.500	AA+	0.678	715	06/15/2016
912828VL1	13071501	United States Treasury Note		07/15/2013	2,000,000.00	2,006,100.00	1,996,179.84	0.625	AA+	0.720	745	07/15/2016
912828VR8	13082601	United States Treasury Note		08/26/2013	2,000,000.00	2,004,840.00	1,992,680.30	0.625	AA+	0.800	776	08/15/2016
912828RJ1	11101101	United States Treasury Note		10/11/2011	2,000,000.00	2,019,375.00	1,997,807.51	1.000	AA+	1.050	822	09/30/2016
912828C32	14032001	United States Treasury Note		03/20/2014	1,000,000.00	1,000,101.90	996,988.93	0.750	AA+	0.867	988	03/15/2017
912828WH9	14051501	United States Treasury Note		05/15/2014	2,000,000.00	2,002,660.00	1,998,028.34	0.875	AA+	0.910	1,049	05/15/2017
912828TB6	14061302	United States Treasury Note		06/13/2014	1,000,000.00	995,937.50	994,619.69	0.750	AA+	0.932	1,095	06/30/2017
912828VE7	13062101	United States Treasury Note		06/21/2013	2,000,000.00	1,978,280.00	1,978,460.87	1.000	AA+	1.285	1,430	05/31/2018
<b>Subtotal and Average</b>			<b>21,541,648.39</b>		<b>22,000,000.00</b>	<b>22,015,666.90</b>	<b>21,938,495.40</b>			<b>0.726</b>	<b>784</b>	
<b>Treasury Discounts</b>												
<b>Subtotal and Average</b>			<b>4,466,608.28</b>									
<b>GNMA</b>												
36216NNL3	88021601A	GNMA		07/01/1997	1,574.74	1,581.32	1,574.74	9.500	AA+	9.615	837	10/15/2016
362174T46	87042001C	GNMA		07/01/1997	4,558.49	4,799.36	4,558.49	8.000	AA+	8.075	988	03/15/2017
36217FKE8	87042001A	GNMA		07/01/1997	12,066.28	12,233.52	12,066.28	8.000	AA+	8.076	1,019	04/15/2017
<b>Subtotal and Average</b>			<b>18,457.90</b>		<b>18,199.51</b>	<b>18,614.20</b>	<b>18,199.51</b>			<b>8.209</b>	<b>995</b>	
<b>Negotiable CDs -2</b>												
06426NGR7	12092601	Bank of China - NY		09/26/2012	250,000.00	250,280.78	250,000.00	0.650	A	0.650	87	09/26/2014
38143AH81	12100301	Goldman Sachs Bank USA		10/03/2012	250,000.00	250,421.70	250,000.00	0.850	A-	0.850	94	10/03/2014
36160XV53	12100501	GE Capital Bank		10/05/2012	250,000.00	250,000.00	250,000.00	0.750	AA+	0.602	97	10/06/2014
05568PZ42	12102601	BMW Bank of North America		10/26/2012	250,000.00	250,000.00	250,000.00	0.700	NR	0.700	118	10/27/2014
02587DQD3	13071801	American Express Centurion Bnk		07/18/2013	250,000.00	250,000.00	250,000.00	0.700	A-	0.700	384	07/20/2015
<b>Subtotal and Average</b>			<b>1,250,000.00</b>		<b>1,250,000.00</b>	<b>1,250,702.48</b>	<b>1,250,000.00</b>			<b>0.700</b>	<b>156</b>	
<b>Total and Average</b>			<b>204,751,180.62</b>		<b>171,419,663.07</b>	<b>171,637,827.39</b>	<b>171,460,764.57</b>			<b>0.611</b>	<b>467</b>	

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CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	S&P	YTM 365	Days to Maturity
<b>Money Market Funds</b>											
SYS1000	1000	Cash in Bank			944,160.20	944,160.20	944,160.20	0.030		0.030	1
SYS1000	131127930	Cash in Bank		11/27/2013	71,478.57	71,478.57	71,478.57	0.090		0.090	1
SYS1030	1030	Cash with Fiscal Agent			2,449,591.10	2,449,591.10	2,449,591.10			0.000	1
		<b>Average Balance</b>	<b>0.00</b>								<b>1</b>
<b>Total Cash and Investments</b>			<b>204,751,180.62</b>		<b>174,884,892.94</b>	<b>175,103,057.26</b>	<b>174,925,994.44</b>			<b>0.611</b>	<b>467</b>

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CUSIP	Investment #	Issuer	Stated Rate	Transaction Date	Purchases or Deposits	Redemptions or Withdrawals	Balance
<b>LAIF (Monthly Summary)</b>							
SYS82000010	82000010	Local Agency Invest. Fd - City	0.228		3,700,000.00	3,700,000.00	
SYS97090401	97090401	Local Agency Invest. Fd - MPFA	0.228		5,800,000.00	33,000,000.00	
<b>Subtotal</b>					<b>9,500,000.00</b>	<b>36,700,000.00</b>	<b>52,400,000.00</b>
<b>Money Market Funds (Monthly Summary)</b>							
SYS1000	1000	Cash in Bank	0.030		944,160.20	968,936.46	
SYS1000	131127930	Cash in Bank	0.090		14,835,320.55	14,800,976.38	
SYS	12020109	Dreyfus Treasury & Agency Fund	0.010		0.34	0.00	
SYS1030	1030	Cash with Fiscal Agent			2,449,591.10	2,449,578.58	
<b>Subtotal</b>					<b>18,229,072.19</b>	<b>18,219,491.42</b>	<b>51,463.56</b>
<b>Corporate Notes</b>							
<b>Subtotal</b>							<b>14,089,048.95</b>
<b>Federal Agency</b>							
3133EDNC2	14061301A	Federal Farm Credit Bank	0.700	06/13/2014	1,600,000.00	0.00	
3133EDNC2	14061301B	Federal Farm Credit Bank	0.700	06/13/2014	400,000.00	0.00	
3133EDPC0	14062701	Federal Farm Credit Bank	1.000	06/27/2014	2,000,000.00	0.00	
3133XWE70	10060101A	Federal Home Loan Bank	2.500	06/13/2014	0.00	1,600,000.00	
3133XWE70	10060101B	Federal Home Loan Bank	2.500	06/13/2014	0.00	1,400,000.00	
313379UC1	12062601	Federal Home Loan Bank	0.550	06/26/2014	0.00	2,000,000.00	
3136G0KG5	12060401	Federal Nat'l. Mortgage Assoc	0.625	06/04/2014	0.00	2,000,000.00	
3136G0NY3	12062701	Federal Nat'l. Mortgage Assoc	1.050	06/27/2014	0.00	2,000,000.00	
<b>Subtotal</b>					<b>4,000,000.00</b>	<b>9,000,000.00</b>	<b>68,014,926.14</b>
<b>Federal Agency Discounts</b>							
313385B88	14060301	Federal Home Loan Bank Discoun	0.045	06/04/2014	3,999,645.00	0.00	
313385B88	14060302	Federal Home Loan Bank Discoun	0.045	06/04/2014	4,999,556.25	0.00	
313385A89	14060303	Federal Home Loan Bank Discoun	0.055	06/04/2014	799,923.00	0.00	
313385B88	14061901	Federal Home Loan Bank Discoun	0.035	06/19/2014	299,983.67	0.00	
313385ZL3	14061902	Federal Home Loan Bank Discoun	0.030	06/19/2014	199,995.33	0.00	
<b>Subtotal</b>					<b>10,299,103.25</b>	<b>0.00</b>	<b>13,698,631.01</b>
<b>Treasury Coupon Securities</b>							
912828TB6	14061302	United States Treasury Note	0.750	06/13/2014	994,531.25	0.00	

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CUSIP	Investment #	Issuer	Stated Rate	Transaction Date	Purchases or Deposits	Redemptions or Withdrawals	Balance
<b>Subtotal</b>					<b>994,531.25</b>	<b>0.00</b>	<b>21,938,495.40</b>
<b>Treasury Discounts</b>							
912796BP3	14022701	US TREASURY BILL	0.040	06/26/2014	0.00	5,000,000.00	
912796DD8	14032002	US TREASURY BILL	0.040	06/19/2014	0.00	500,000.00	
<b>Subtotal</b>					<b>0.00</b>	<b>5,500,000.00</b>	<b>0.00</b>
<b>GNMA</b>							
36217FKE8	87042001A	GNMA	8.000	06/15/2014	0.00	331.57	
362174T46	87042001C	GNMA	8.000	06/15/2014	0.00	161.73	
36216NNL3	88021601A	GNMA	9.500	06/15/2014	0.00	60.40	
<b>Subtotal</b>					<b>0.00</b>	<b>553.70</b>	<b>18,199.51</b>
<b>Negotiable CDs -2</b>							
<b>Subtotal</b>							<b>1,250,000.00</b>
<b>Total</b>					<b>43,022,706.69</b>	<b>69,420,045.12</b>	<b>171,460,764.57</b>

# City of Milpitas

## Investment Broker Dealer List

Cantor Fitzgerald & Co.

Dreyfus Institutional Services

Mischler Financial Group, Inc.

Morgan Stanley Smith Barney

State of California Local Agency Investment Fund

Vining Sparks IBG, L.P.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE  
ANNUAL INVESTMENT POLICY**

**WHEREAS**, the Legislature of the State of California has declared that the deposit and investment of public funds by local officials and local agencies is an issue of statewide concern; and

**WHEREAS**, the legislative body of a local agency may invest surplus monies not required for the immediate needs of the local agency in accordance with the provisions of California Government Code Section 53601 *et seq.*; and

**WHEREAS**, the Treasurer of the local agency shall annually prepare and submit a statement of investment policy and such policy, and any changes thereto, shall be considered by the legislative body at a public meeting; and

**WHEREAS**, the previous Annual Investment Policy was last reviewed and approved by the City Council pursuant to Resolution No. 8288 on August 20, 2014.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council has reviewed and considered the attached Annual Investment Policy, including any changes, and the attached Annual Investment Policy is hereby approved.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney



# CITY OF MILPITAS INVESTMENT POLICY

## POLICY OVERVIEW

### PURPOSE

The purpose of this policy is to establish overall guidelines for the management and investment of the City of Milpitas (the City) unexpended funds under authority granted by the City Council. This policy is in compliance with the provisions of the California Government Code, Sections 16429.1-16429.4, and 53600-53610, the authority governing investments for municipal governments.

### INVESTMENT OBJECTIVES

The primary objectives of this investment policy, in order of priority, are safety, liquidity, and yield:

- 1) **Safety** - Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. This objective shall be accomplished by mitigating credit risk and market risk.
- 2) **Liquidity** - The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This objective shall be accomplished by structuring the portfolio so that securities mature concurrently with anticipated needs. The portfolio shall consist largely of securities with active secondary or resale market. Furthermore, a portion of the portfolio may be placed in money market funds or Local Agency Investment Fund (LAIF) which offer same day liquidity for short term investment.
- 3) **Yield** - The investment portfolio is designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into consideration the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The core of investments is limited to relatively low risk securities in anticipation of earning a fair return relative to the risk being assumed. Nevertheless, investment performance shall be continually monitored and evaluated by the City Treasurer by comparison with other investment portfolio benchmark yields.

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### SCOPE

The investment policy applies to all financial assets of the City of Milpitas as accounted for in the Comprehensive Annual Financial Report (CAFR), including but not limited to the funds listed below:

- General Fund
- Special Revenue Funds
- Capital Projects Funds

- Debt Service Fund
- Enterprise Funds
- Internal Service Fund
- Trust and Agency Funds
- Any new fund created by the City Council unless specifically exempted with the exception of the following:
  - 1) The City's Deferred Compensation Plan is excluded because it is managed by a third party administrator and invested by individual plan participants.
  - 2) Proceeds of debt issuance shall be invested in accordance with the investment objectives of this policy. However, such proceeds are generally invested in accordance with permitted investment provisions of their specific bond indentures. If the City Treasurer determines that the matching of bond reserve fund with the maturity schedule of an individual bond issue is prudent, the investment policy authorizes extending beyond the five year maturity limitation as outlined in this document.

### **STANDARDS OF CARE**

- 1) **Prudence** - The City investment officials shall act as a fiduciary subject to the Prudent Investor Standard. Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. The City Treasurer and other individuals assigned to manage the investment portfolio, acting within the intent and scope of the investment policy and other written procedures and exercising due diligence, shall be relieved of personal responsibility and liability for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely manner and appropriate action is taken to control adverse developments.
- 2) **Ethics and Conflict of Interest** - Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or could impair their ability to make impartial investment decisions. City employees involved in the investment process shall disclose to the City Manager any material financial interest in financial institutions that conduct business within the jurisdiction. They shall further disclose any large personal financial/investment positions that could affect the performance of the investment portfolio.
- 3) **Delegation of Authority** - Authority to manage the investment program is granted to the City Treasurer and derived from Section VI-1-3.04 of the City of Milpitas Municipal Code. Under the oversight of the City Treasurer, responsibility for the operation of the investment program may be delegated to the Finance Administration staff, who shall act in accordance with established written procedures and internal controls consistent with the investment policy. The City Treasurer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of the subordinate staff members. The system of internal controls includes separation of duties, custodial safekeeping, avoidance of physical delivery securities, development of wire transfer agreement, and clear delegation of authority to subordinate staff members.

# INVESTMENT GUIDELINES

## SAFETY OF PRINCIPAL

Safety of principal is the primary objective of The City. Each investment transaction shall seek to ensure that capital losses are avoided, whether from securities default, broker/dealer default or erosion of market value. The City shall seek to preserve principal by mitigating the two types of risk, credit risk and market risk:

**Credit risk**, defined as the risk of loss due to failure of the issuer of a security, shall be mitigated by investing in investment grade securities and by diversifying the investment portfolio so that the failure of any one issuer does not unduly harm the City's capital base and cash flow.

**Market risk**, defined as market value fluctuations due to overall changes in the general level of interest rates, shall be mitigated by limiting the average maturity of the City's investment portfolio to two years, the maximum maturity of any one security to five years, structuring the portfolio based on historic and current cash flow analysis eliminating the need to sell securities prior to maturity and avoiding the purchase of long term securities for the sole purpose of short term speculation.

## LIQUIDITY

The City's financial portfolio shall be structured in a manner to ensure that the securities mature concurrent with anticipated cash demands. The portfolio should consist largely of securities with an active secondary or resale market to meet any unanticipated cash demands. A portion of the portfolio may be placed in money market funds or LAIF which offer same day liquidity for short term investment.

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It is the full intent of the City to hold all investments until maturity to ensure the return of all invested principal. However, securities may be sold prior to maturity under the following circumstances:

- A security with declining credit may be sold early to minimize loss of principal,
- A security swap would improve the quality, yield, or target duration in the portfolio, or
- Liquidity needs of the portfolio require that the security be sold.

## INVESTMENT PARAMETERS

1) **Diversification** - The investment shall be diversified by:

- limiting investments to avoid over concentration in securities from a specific issuer or business sector (excluding U.S. Treasury and Federal Agency securities),
- limiting investment in securities that have higher credit risks,
- investing in securities with varying maturities, and
- continuously investing a portion of the portfolio in readily available funds such as LAIF or money market funds to ensure that appropriate liquidity is maintained in order to meet unanticipated cash demands.

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- 2) **Maximum Maturities** - To the extent possible, the City shall attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the City will not directly invest in securities maturing more than five (5) years from the date of purchase. The intent to invest in securities beyond the five year maturity limitation shall be disclosed in writing to the City Council no less than 3 months prior to the investment. As a general rule, the weighted average maturity of the investment portfolio will not exceed two years. Reserve funds established by the issuance of bonds and other funds with longer-term investment horizons may be invested in securities exceeding five years if the maturity of such investments are made to coincide with the expected use of funds.
- 3) **Competitive Bidding** - It is the policy of the City to require competitive bidding for investment transactions that are not classified as "new issue" securities. For the purchase of non "new issue" securities and the sale of all securities, with the exception of U.S. Treasury securities, at least three bidders must be contacted. Competitive bidding for security swaps is also recommended, however, it is understood that certain time constraints and broker portfolio limitations exist which would not accommodate the competitive bidding process. If time or portfolio constraining condition exists, the pricing of the swap should be verified to current market conditions and documented for auditing purposes.

#### **PERFORMANCE EVALUATION/BENCHMARK**

- Investment performance is continually monitored and evaluated by The City Treasurer. Investment performance statistics and activity reports are prepared on a quarterly basis for presentation to the City Manager and City Council within 30 days of the end of the quarter.
- The investment portfolio benchmark yield shall be the 12 month average yield of the two-year U.S. Treasury note. This benchmark yield coincides with the City's intended weighted average maturity of two years.

#### **SAFEKEEPING OF SECURITIES**

- To protect against fraud or embezzlement or losses caused by collapse of an individual securities dealer, all securities owned by the City shall be held in safekeeping by a third party bank trust department, acting as agent for the City under the terms of a custody agreement or master repurchase agreement. All trades executed by a dealer will settle delivery vs. payment (DVP) through the City's safekeeping agent.
- Securities held in custody for the City shall be reviewed and verified quarterly by Finance staff who has not been assigned to the investment function.

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#### **INTERNAL CONTROL**

The City Treasurer is responsible for establishing and maintaining an internal control structure designed to ensure that the assets of the City are protected from loss, theft or misuse. The internal control structure shall be designed to provide reasonable assurance that these objectives are met. The concept of reasonable assurance recognizes that the cost of a control should not exceed the benefits to be derived and that the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall address the following points:

- Control of collusion
- Separation of transaction authority from accounting and record keeping
- Custodial safekeeping
- Avoidance of physical delivery securities
- Clear delegation of authority to subordinate staff members
- Written confirmation of transactions for investments and wire transfers
- Development of a wire transfer agreement with the lead bank and third party custodian

### **REPORTING**

- The City Treasurer shall review and render quarterly reports to the City Manager and City Council which shall include the par and dollar amount of the investment, the classification of the investment, the percentage of the total portfolio which each type of investment represents, the name of the institution or entity, the rate of interest, the maturity date, the current market value, and the source of the market value.
- Statement that the projected cash flow is adequate to meet expected obligations over the next six months.
- The weighted average maturity of the investment portfolio.
- The average weighted yield to maturity of the portfolio as compared to the applicable benchmark.
- Statement of compliance with the investment policy.
- The report is due within 30 days of the end of the quarter.
- The City Manager may, at his discretion, require this reporting on a monthly basis based upon market conditions.

### **QUALIFIED BROKER/DEALERS**

- The City shall transact business with financial institutions and security broker/dealers after careful review of their qualifications and creditworthiness. All dealers who desire to do business with the City shall provide the necessary information (e.g. audited financial statements, proof of state registration, proof of National Association of Securities Dealers certification, etc.) from which the City can determine their creditworthiness, the existence of any pending legal action against the firm or the individual broker as well as an understanding of the security markets that they service.
- The City Treasurer shall annually send a copy of the current investment policy to all financial institutions and broker/dealers approved to do business with the City. Confirmation of receipt of this policy shall be considered evidence that the dealer understands the City's investment policies and intends to sell the City only appropriate investments authorized by this investment policy.

### **COLLATERAL REQUIREMENTS**

Collateral is required for investments in non-negotiable certificates of deposit and repurchase agreements. In order to reduce market risk, the collateral level shall be at least 102% of market value of principal and accrued interest and marked-to-market weekly. Securities acceptable as

collateral shall be the direct obligations of, or are fully guaranteed as to principal and interest by the United States or any agency of the United States.

#### **AUTHORIZED INVESTMENTS**

Investment of City funds is governed by the California Government Code Sections 16429.1-16429.4 and 53600 et seq. Within the context of the limitations, the following investments are authorized, as further limited herein:

- 1) **United States Treasury Bills, Bonds, and Notes** or those for which the full faith and credit of the United States are pledged for payment of principal and interest. There is no percentage limitation of the portfolio which can be invested in this category, though a five year maturity limitation is applicable.
- 2) **Federal Agency Obligations** - Obligations issued by the Federal Government agencies such as Government National Mortgage Association (GNMA), the Federal Farm Credit Bank (FFCB), the Federal Home Loan Bank (FHLB), the Federal National Mortgage Association (FNMA), the Student Loan Marketing Association (SLMA), and the Federal Home Loan Mortgage Corporation (FHLMC). There is no percentage limitation of the portfolio which can be invested in this category, although a five year maturity limitation is applicable.
- 3) **Bills of Exchange/Time Drafts**- Bills of exchange or time drafts drawn on and accepted by commercial banks, otherwise known as banker's acceptances. Purchase of banker's acceptances may not exceed 180 days maturity or 20% of the cost value of the portfolio. Furthermore, no more than \$5 million or 10% of the cost value of the portfolio may be invested in the banker's acceptances of any one commercial bank.
- 4) **Commercial Paper** of the highest letter and number rating as provided by at least two nationally recognized statistical rating organizations, issued by general corporations organized and operating within the United States, having assets in excess of \$500,000,000 and having an AA or better rating on their long term debentures as provided by at least two nationally recognized statistical rating organizations . Purchases of eligible commercial paper may not exceed 270 days maturity nor represent more than 10% of the outstanding paper of the issuing corporation. Purchases of commercial paper may not exceed 15% of the cost value of the portfolio.
- 5) **Negotiable Certificates of Deposit** issued by nationally or state chartered banks, state or federal savings institutions, or state-licensed branch of foreign banks. Purchases of negotiable certificates of deposit may not exceed 30% of the cost value of the portfolio. A maturity limitation of five years is applicable.
- 6) **Repurchase Agreements** - Repurchase agreements may be made on any investment authorized by this investment policy. The maturity of the repurchase agreements shall not exceed one year. The market value of the securities used as collateral for the repurchase agreements shall be monitored by the investment staff weekly and shall not be allowed to fall below 102% of the value of the repurchase agreement. A Master Repurchase agreement is required between the City and the dealer for all repurchase agreements transacted.

7) **Time Deposits** - Time deposits, non-negotiable and collateralized in accordance with the California Government Code, may be purchased through banks or savings and loan associations. Since time deposits are not liquid, no more than 10% of the investment portfolio may be invested in this investment type. A maturity limitation of two years is applicable.

8) **Medium-Term Corporate Notes** issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States with a maximum maturity of five years may be purchased. Securities eligible for investment shall be rated AA or better by at least two nationally recognized statistical rating organizations. Purchase of medium-term notes may not exceed 30% of the cost value of the portfolio and no more than 10% of the cost value of the portfolio may be invested in notes issued by one corporation. Commercial paper holdings should also be included when calculating the 10% limitation.

9) **Local Agency Investment Fund (LAIF)** - a State of California managed investment pool may be used up to the maximum permitted by California State Law.

10) **Money Market Funds** - ~~Money Market~~ funds invested in U.S. Government securities are permitted under this policy and under the California Government Code Section 53601. In order to be eligible for investment under this section, an investment objective of such a fund must be the maintenance of a price per share of \$1.00. Investment in such funds shall not exceed 20% of the City's total portfolio and no more than 10% of the City's total portfolio may be invested in any one ~~money market~~ fund. In addition, either one of the following criteria must be met:

- The fund shall have achieved a rating of Aaa by at least two nationally recognized statistical rating organizations, or
- shall have retained an advisor who is registered or exempt from registration with the Security Exchange Commission with not less than five years' experience managing money market funds with assets under management in excess of five hundred million dollars (\$500,000,000).

For both the LAIF and Money Market Funds investment, a thorough investigation of the investment pool is required on a continual basis. The types of investment and average maturity as reported by LAIF on their monthly investment reports and by the Money Market Mutual Funds on their semi-annual reports will be examined closely to ensure that the criteria for qualifying these investment pools remain unchanged.

11) **Security Swaps** - The City may take advantage of security swap opportunities to improve the overall quality, yield or target duration of the portfolio. A swap that improves the portfolio yield may be selected even if the transactions result in an accounting loss. Documentation for swaps will be included in the City's permanent investment file documents.

12) **Ineligible Investments** - Ineligible investments are those that are not described herein, including but not limited to, common stocks, reverse repurchase agreements, inverse floaters,

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range notes, mortgage derived interest only strips, derivatives securities, or any security that could result in zero interest accrual.

#### **MAXIMUM INVESTMENT MATURITY AND PERCENTAGE**

The following matrix of maximum maturity and percentage limits, by instrument, are established for the City's total pooled funds portfolio:

<b>Investment Type</b>	<b>Maturity</b>	<b>Percentage</b>
Repurchase Agreements	1 Year	0 to 100%
Local Agency Investment Fund	Upon Demand	\$50,000,000 per account
U.S. Treasury Bonds/Notes/Bills	5 Years	0 to 100%
U.S. Government Agency Obligations	5 Years	0 to 100%
Bankers' Acceptances	180 Days	0 to 20%
Commercial Paper	270 Days	0 to 15%
Negotiable Certificates of Deposit	5 Years	0 to 30%
Time Certificates of Deposit	2 Years	0 to 10%
Medium-Term Corporate Notes	5 Years	0 to 30%
Money Market Funds	Upon Demand	0 to 20%

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#### **LEGISLATIVE CHANGES**

Any State of California legislative action, that further restricts allowable maturities, investment type or percentage allocations, will be incorporated into the City's Investment Policy and supersede any and all previous applicable language.

#### **INTEREST EARNINGS**

All moneys earned and collected from investments authorized in this policy shall be allocated monthly to various fund accounts based on the cash balance in each fund as a percentage of the entire pooled portfolio.

#### **POLICY CONSIDERATIONS**

- 1) **Exemption** - Any investment currently held that does not meet the guidelines of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested only as provided by this policy.
- 2) **Amendments** - The City's investment policy shall be adopted by resolution of the City Council on an annual basis. This investment policy shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity and yield, and its relevance to current law and financial and economic trends. Any amendments to the policy shall be forwarded to City Council for approval.



## GLOSSARY OF TERMS

**Accrued Interest-** Interest earned but not yet received.

**Active Deposits-** Funds which are immediately required for disbursement.

**Amortization-** An accounting practice of gradually decreasing (increasing) an asset's book value by spreading its depreciation (accretion) over a period of time.

**Arbitrage-** Transactions by which securities are bought and sold in different markets at the same time for the sake of the profit arising from a yield difference in the two markets.

**Asked Price-** The price a broker dealer offers to sell securities.

**Banker's Acceptance-** A high quality, short term money market instrument used to finance international trade. There has never been an instance of a failure to pay a banker's acceptance in full at its maturity date.

**Basis Point-** One basis point is one hundredth of one percent (.01).

**Bid Price-** The price a broker dealer offers to purchase securities.

**Bond-** A financial obligation for which the issuer promises to pay the bondholder a specified stream of future cash flows, including periodic interest payments and a principal repayment.

**Book Value-** The value at which a debt security is shown on the holder's balance sheet. Book value is acquisition cost less amortization of premium or accretion of discount.

**Broker-** Someone who brings buyers and sellers together and is compensated for his/her service.

**Certificate of Deposit-** A deposit insured up to \$250,000 by the FDIC at a set rate for a specified period of time.

**Collateral-** Securities, evidence of deposit or pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposit of public moneys.

**Commercial Paper-** Short-term, negotiable unsecured promissory notes of corporations.

**Comprehensive Annual Financial Report (CAFR)-** The official annual financial report for the City, prepared in conformity with Generally Accepted Accounting Principles (GAAP).

**Coupon-** The annual rate of interest that a bond's issuer promises to pay the bondholder on the bond's face value.

**Credit Risk** - Defined as the risk of loss due to failure of the issuer of a security.

**Current Yield**- The interest paid on an investment expressed as a percentage of the current price of the security.

**Custodian**- A bank or other financial institution that keeps custody of stock certificates and other assets.

**Defeased Bond Issues**- Issues that have sufficient money to retire outstanding debt when due so that the agency is released from the contracts and covenants in the bond document.

**Delivery vs. Payment (DVP)**- Delivery of securities with a simultaneous exchange of money for the securities.

**Derivative**- Securities that are based on, or derived from, some underlying asset, reference date, or index.

**Discount**- The difference between the cost of a security and its value at maturity when quoted at lower than face value.

**Diversification**- Dividing investment funds among a variety of securities offering independent returns and risk profiles.

**Duration**- A measure of the timing of the cash flows, such as the interest payments and the principal repayment, to be received from a given fixed-income security. This calculation is based on three variables: term to maturity, coupon rate, and yield to maturity. The duration of a security is a useful indicator of its price volatility for given changes in interest rates.

**Fannie Mae**- Trade name for the Federal National Mortgage Association (FNMA), a U.S. sponsored corporation.

**Federal Reserve System**- The central bank of the U.S. which consists of a seven member Board of Governors, 12 regional banks and 5,700 commercial banks that are members.

**Federal Deposit Insurance Corporation (FDIC)**- Insurance provided to customers of a subscribing bank which guarantees deposits to a set limit (currently \$250,000) per account.

**Fed Wire**- A wire transmission service established by the Federal Reserve Bank to facilitate the transfer of funds through debits and credits of funds between participants within the Fed system.

**Freddie Mac**- Trade name for the Federal Home Loan Mortgage Corporation (FHLMC), a U.S. sponsored corporation.

**Ginnie Mae**- Trade name for the Government National Mortgage Association (GNMA), a direct obligation bearing the full faith and credit of the U.S. Government.

**Government Accounting Standards Board (GASB)**-A standard-setting body, associated with the Financial Accounting Foundation, which prescribes standard accounting practices for governmental units.

**Guaranteed Investment Contracts (GICS)**- An agreement acknowledging receipt of funds, for deposit, specifying terms for withdrawal, and guaranteeing a rate of interest to be paid.

**Inactive Deposits**- Funds not immediately needed for disbursement.

**Interest Rate**- The annual yield earned on an investment, expressed as a percentage.

**Investment Agreements**- An agreement with a financial institution to borrow public funds subject to certain negotiated terms and conditions concerning collateral, liquidity and interest rates.

**Liquidity**- An asset that can easily and rapidly be converted into cash without significant loss of value.

**Local Agency Investment Fund (LAIF)**-A pooled investment vehicle for local agencies in California sponsored by the State of California and administered by the State Treasurer.

**Local Agency Investment Pool**- A pooled investment vehicle sponsored by a local agency or a group of local agencies for use by other local agencies.

**Market Risk** - Defined as market value fluctuations due to overall changes in the general level of interest rates.

**Market Value**- The price at which a security is trading and could presumably be purchased or sold.

**Maturity**- The date upon which the principal or stated value of an investment becomes due and payable.

**Modified Duration**-A measure of exposure to market risk of a security or a portfolio. It is the percent change in the price of a security (portfolio) or a 100 basis point change in the security's (portfolio's) yield.

**Mutual Funds**- An investment company that pools money and can invest in a variety of securities, including fixed-income securities and money market instruments.

**Negotiable Certificate of Deposit**-A large denomination certificate of deposit which can be sold in the open market prior to maturity.

**New Issue**- Term used when a security is originally "brought" to market.

**Note**- A written promise to pay a specified amount to a certain entity on demand or on a specified date.

**Par Value-** The amount of principal which must be paid at maturity. Also referred to as the face amount of a bond, normally quoted in \$1,000 increments per bond.

**Perfected Delivery-** Refers to an investment where the actual security or collateral is held by an independent third party representing the purchasing entity.

**Portfolio-** Combined holding of more than one stock, bond, commodity, real estate investment, cash equivalent, or other asset. The purpose of a portfolio is to reduce risk by diversification.

**Primary Dealer-** A group of government securities dealers that submit daily reports of market activity and security positions held to the Federal Reserve Bank of New York and are subject to its informal oversight.

**Principal-** The face value or par value of a debt instrument, or the amount of capital invested in a given security.

**Prospectus-** A legal document that must be provided to any prospective purchaser of a new securities offering registered with the SEC that typically includes information on the issuer, the issuer's business, the proposed use of proceeds, the experience of the issuer's management, and certain certified financial statements (also known as an "official statement")

**Prudent Investor Standard-** A standard of conduct where a person acts with care, skill, prudence, and diligence when investing, reinvesting, purchasing, acquiring, exchanging, selling and managing funds. The test of whether the standard is being met is if a prudent person acting in a similar situation would engage in similar conduct to ensure that investments safeguard principal and maintain liquidity.

**Purchase Date-** The date in which a security is purchased for settlement on that or a later date.

**Rate of Return-** The yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond or the current income return.

**Repurchase Agreement (REPO)-** A transaction where the seller agrees to buy back from the buyer (City) the securities at an agreed upon price on demand or at a specified date.

**Reverse Repurchase Agreement (REVERSE REPO)-** A transaction where the seller (City) agrees to buy back from the buyer the securities at an agreed upon price on demand or at a specified date.

**Risk-** Degree of uncertainty of return on an asset.

**Rule G-37 of the Securities Rulemaking Board-** Federal regulations to sever any connection between the making of political contributions and the awarding of municipal securities business.

**Safekeeping Service-** An arrangement under which a third party institution holds securities or valuables under safe, controlled conditions. A safekeeping arrangement is evidenced by a safekeeping receipt.

**Sallie Mae-** Trade name for the Student Loan Marketing Association (SLMA), a U.S. sponsored corporation.

**Secondary Market-** A market made for the purchase and sale of outstanding issues following the initial distribution.

**Securities and Exchange Commission (SEC)-** The federal agency responsible for supervising and regulating the securities industry.

**Settlement Date-** The date on which a trade is cleared by delivery of securities against funds.

**Tax and Revenue Anticipation Notes (TRANS)-** Notes issued in anticipation of receiving tax proceeds or other revenues at a future date.

**Time Certificate of Deposit-** A non-negotiable certificate of deposit which cannot be sold prior to maturity.

**Treasury Bills-** U.S. Treasury Bills which are short-term, direct obligations of the U.S. Government issued with original maturities of 13 weeks, 26 weeks and 52 weeks; sold in minimum amounts of \$10,000 in multiples of \$5,000 above the minimum. Issued in book entry form only. T-bills are sold on a discount basis.

**Trustee or trust company or trust department of a bank-** A financial institution with trust powers which acts in a fiduciary capacity for the benefit of the bondholders in enforcing the terms of the bond contract.

**Underwriter-** A dealer which purchases a new issue of municipal securities for resale.

**U.S. Government Agencies-** Instruments issued by various US Government Agencies most of which are secured only by the credit worthiness of the particular agency.

**U.S. Treasury Obligations-** Debt obligations of the United States Government sold by the Treasury Department in the forms of Bills, Notes, and Bonds. Bills are short-term obligations that mature in 1 year or less and are sold on the basis of a rate of discount. Notes are obligations which mature between 1 year and 10 years. Bonds are long-term obligations which generally mature in 10 years or more.

**Weighted Average Maturity (WAM)-** The average maturity of all the securities that comprise a portfolio that is typically expressed in days or years.

**Yield-** The rate of annual income return on an investment, expressed as a percentage. It is obtained by dividing the current dollar income by the current market price of the security.

**Yield to Maturity-** The rate of income return on an investment, minus any premium or plus any discount, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond, expressed as a percentage.

**Yield Curve-** A graphic representation that shows the relationship at a given point in time between yields and maturity for bonds that are identical in every way except maturity.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS  
AUTHORIZING THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY TO  
INITIATE, DEFEND AND SETTLE ARBITRATION RELATED TO THE WATER SUPPLY  
AGREEMENT WITH THE CITY AND COUNTY OF SAN FRANCISCO**

**WHEREAS**, in April 2003, the City of Milpitas (City) and other water suppliers in Alameda, San Mateo and Santa Clara counties established the Bay Area Water Supply and Conservation Agency (BAWSCA) as authorized by Water Code Section 81300 *et seq.* pursuant to State legislation enacted in 2002 (AB 2058); and

**WHEREAS**, the City is represented on the BAWSCA Board of Directors; and

**WHEREAS**, the City Council has previously approved the Water Supply Agreement in 2009 between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County (Agreement); and

**WHEREAS**, the Agreement specifically delegates, pursuant to Section 8.04.A., Wholesale Revenue Requirement review to BAWSCA; and

**WHEREAS**, all questions and disputes related to the Agreement are subject to judicial determination, except for the following matters, specified in Section 8.01.A., which are subject to mandatory, binding arbitration: (1) the determination of the Wholesale Revenue Requirement, (2) San Francisco Public Utilities Commission's (SFPUC's) adherence to accounting practices and conduct of the Compliance Audit, and (3) the SFPUC's classification of new assets for the purposes of determining the Wholesale Revenue Requirement; and

**WHEREAS**, the Agreement, pursuant to Section 8.04.C., provides that the Wholesale Customers may, with the consent of BAWSCA, delegate the authority to initiate, defend and settle arbitration of the matters provided for in Section 8.01.A. set forth above; and

**WHEREAS**, the BAWSCA Board of Directors has requested that the City delegate this authority to initiate, defend and settle arbitration solely for those limited matters in the Agreement that must be resolved through binding arbitration in order to protect the financial interests of the Wholesale Customers by ensuring they pay no more than their fair share of regional water system costs; and

**WHEREAS**, BAWSCA has the capabilities required to serve in this capacity by virtue of the expertise and qualifications of BAWSCA staff and consultants in relevant disciplines including civil engineering, water supply planning, finance, economics, accounting, and law; and

**WHEREAS**, BAWSCA will also finance the costs associated with such binding arbitration.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. City appoints BAWSCA, acting through its Board of Directors, or its authorized designee, as its authorized representative to initiate, defend and settle arbitration for the matters that are subject to mandatory, binding arbitration in the Water Supply Agreement between the City and County of San Francisco and Wholesale Customers in Alameda County, San Mateo County and Santa Clara County.

2. This appointment shall continue through the term of the Agreement, June 30, 2034, or as extended or renewed, or until revoked by the City Council.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney



**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AWARDING TO AND APPROVING A CONTRACT WITH MATTHEW W. ADAMS, AN INDIVIDUAL DBA "ALL-LINE UNIFORM SALES," TO SUPPLY ANNUAL CLOTHING REQUIREMENTS FOR CITY EMPLOYEES AND AUTHORIZE THE CITY MANAGER OR DESIGNEE TO EXERCISE UP TO FOUR (4) ANNUAL RENEWAL OPTIONS, SUBJECT TO APPROPRIATION OF FUNDS AND WITHOUT FURTHER CITY COUNCIL APPROVAL**

**WHEREAS**, on May 27, 2014, City of Milpitas ("City") staff released an Invitation For Bid (IFB) #2073 soliciting bids for Annual Clothing Requirements for City Employees, which was published in the *Milpitas Post*, on the City website and through the *Public Purchase* electronic procurement website; and

**WHEREAS**, on June 20, 2014, three (3) bids were received in response to the IFB and Matthew W. Adams, an individual dba "All-Line Uniform Sales," was deemed the lowest, responsible and responsive bidder; and

**WHEREAS**, the City's Purchasing Agent recommends the City Council approve the contract between the City and All-Line Uniform Sales for the period from August 6, 2014 to August 5, 2015 in the initial not-to-exceed amount of Fourteen Thousand Four Hundred Thirty-Four Dollars and Twenty-Four Cents (\$14,434.24); and

**WHEREAS**, City staff also requests authority for the City Manager or designee to exercise up to four (4) annual renewal options in the annual amount of Fourteen Thousand, Four Hundred Thirty-Four Dollars and Twenty-Four Cents (\$14,434.24), with annual fee increases not to exceed the Consumer Price Index or three percent (3%) each year, whichever is less, without further City Council approval and subject to appropriation of funds.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council awards to and approves the contract with Matthew W. Adams, an individual dba "All-Line Uniform Sales," for Annual Clothing Requirements for City Employees from August 6, 2014 to August 5, 2015 in an amount not to exceed Fourteen Thousand, Four Hundred Thirty-Four Dollars and Twenty-Four Cents (\$14,434.24); a copy of the contract is on file with the City Purchasing Agent; and
3. The City Council authorizes the City Manager or designee to extend the term of the contract by exercising up to four (4) annual renewal options in the annual amount not to exceed Fourteen Thousand Four Hundred Thirty-Four Dollars and Twenty-Four Cents (\$14,434.24), with annual fee increase not to exceed the Consumer Price Index or three percent (3%), whichever is lower, without further City Council approval and subject to appropriation of funds.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM

\_\_\_\_\_  
Michael J. Ogaz, City Attorney



**City of Milpitas  
CONTRACT**

**Project:** Annual Clothing Requirements for City Employees

**Bid No:** 2073

**Annual Amount of Contract:** \$14,434.24

THIS CONTRACT, made this 6<sup>th</sup> day of August, 2014, by and between the City of Milpitas, a municipal corporation of State of California, hereinafter referred to as "City" and **Matthew W. Adams, an individual dba All-Line Uniform Sales**, a hereinafter referred to as "Contractor",

**WITNESSETH:**

A. WHEREAS, the City of Milpitas has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and

B. WHEREAS, said Specifications include:

1. Invitation For Bids and all Addenda
2. Specifications/Scope of Work
3. Instructions To Bidders
4. Terms and Conditions
5. Special Provisions For Services
6. List of Documents to be Returned with Bid
7. Bid Forms
8. Non-Collusion Affidavit
9. Bidder's Statement Regarding Insurance Coverage
10. Worker's Compensation Insurance Certificate
11. Bidder's Nondiscriminatory Employment Certificate
12. Notice to Exercise of Option to Extend Agreement (Contract)

C. WHEREAS, Contractor has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the Contractor's Bid and further as agreed upon by the parties as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and Contractor's Bid, which are attached hereto and made a part hereof as though fully set forth, Contractor hereby agrees to complete the work at the prices and on the terms and conditions therein contained, and the City of Milpitas hereby employs the Contractor and agrees to pay the Contractor the contract prices therein provided for the fulfillment of the work and the performance of the covenants therein set forth.

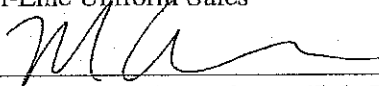
The initial term of this Contract is from August 6, 2014 to August 5, 2015 ("Initial Term") in the amount not-to-exceed Fourteen Thousand, Four Hundred Thirty-Four Dollars and Twenty-Four Cents (\$14,434.24). The City reserves the right at its sole discretion to extend this Contract on an annual basis for up to Four (4) years (with the final option year automatically expiring no later than June 30, 2019) and in an annual amount not-to-exceed Fourteen Thousand, Four Hundred Thirty-Four Dollars and Twenty-Four Cents (\$14,434.24) by providing written notice to Contractor prior to the expiration of the then applicable term and in the form as part of the Specifications entitled "Notice of Exercise of Option to Extend Agreement". The City may increase the compensation in any renewal year based on the Consumer Price Index or three percent (3%), whichever is less. The City will make monthly payments within thirty (30) days receipt of each approved invoice.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

CITY OF MILPITAS,  
A Municipal Corporation

\_\_\_\_\_  
Thomas C. Williams, City Manager

CONTRACTOR:  
All-Line Uniform Sales

  
\_\_\_\_\_  
Matthew W. Adams, Owner/Sole Proprietor

80 Gilman Ave. Suite 25  
Campbell, Ca 95008  
Telephone: (408) 376-0876  
E-Mail address: [sales@alllineuniforms.com](mailto:sales@alllineuniforms.com)  
Business Tax Compliance:  
Certificate No. 012484  
FEIN: 55-17377448

Approved As To Form:

\_\_\_\_\_  
Mike Ogaz, City Attorney

Approved As To Content:

\_\_\_\_\_  
City Project/Contract Manager

ATTEST:

By: \_\_\_\_\_  
Mary Lavelle, City Clerk

## SPECIFICATIONS

These requirements are specified with manufacturers whose products have been tested and approved by the intended users. As such, no substitutions are permitted for this bid. The following is a summary of quantities and items to be purchased under the contract awarded from this solicitation:

MANUFACTURER	DESCRIPTION	QUANTITY
Carhartt	Men's Duck Traditional Coat/Artic Quilt-lined	44
Dorfman Pacific	Brush Twill Safari Hat	31
Fruit of the Loom	Pullover hooded sweatshirt	31
Fruit of the Loom	Full zip hooded sweatshirt	76
Fruit of the Loom	Crew neck sweatshirt	39
Hanes	T-Shirt with pocket	189
Port & Co.	Long sleeve T- w/pocket	98
Richardson	Ball cap	22
Ultra Club	Polo short sleeve T w/pocket	92
Ultra Club	Beanie, Long	26
Ultra Club	Beanie, Short	34
Yupoong	Ball Cap	120

Specific items detailed on the Bid Form, Bid Summary Sheet and Detailed Unit Pricing Bid Sheet represent the initial items, product number, color, size and quantities to be purchased. However, garments may have color, size and quantity changes during the contract term. The color grey goes by many names depending upon the manufacturer, where grey is specified, it is intended to be the closest to Charcoal Grey as feasible. An acceptable color for the Beefy T-Shirts is Light Steel; Athletic heather grey for the PC61st and sweatshirts; Grey tone for the Richardson hats.

For any large or tall size garment that are not carried in stock, the item must be made or outsourced for manufacture matching as close as possible to the original specifications of the specified item.

For the Yupoong Caps, divide the group into two sizes of S/M and L/XL and for the Richardson hats likewise divide into two sizes of S/M and M/L. The Beanie "one size fits all" is acceptable.

Additional items may be required throughout the contract year for new employees or otherwise. Items requiring either a silk-screened or embroider logo are indicated on the Detailed Unit Pricing Bid Sheet. However, unless changed in writing by the City, the silk-screen and embroidery set-up fee will only be paid once at the beginning the five-year contract term.

Quality Control:

The selected vendor shall assure that the garments furnished from this solicitation are authentically produced by the manufacturers specified. Furthermore, the selected vendor shall assure that all items furnished will be free from defect in material workmanship and damage. Manufacturer warranties shall be provided.

**Use of City Logo:**

The selected vendor will be provided reproduction quality graphics for silk-screening and embroidery of the City standard logo. The silk-screening ink color shall be: PMS 281C. The embroidery thread color shall be: Madeira USA 1843 Blue. Under no circumstances shall the City logo be used for any other purposes, except those stipulated in this IFB and the contract to be awarded thereafter. Logo "proof" to be provided for approval prior to applying to garments ordered.

For silk screen purposes, the logo is 2.8 inches in diameter. For embroidery purposes, the logo is 2.25 inches in diameter and 7080 total stitches.

**Additional Requirements:**

1. On an annual basis, Contractor will provide the City of Milpitas with one sample of each size short and long sleeve tee shirts, polo shirts, crew neck sweatshirt, pullover hooded sweatshirt, full zip hooded sweatshirt, cap, beanie, hat, and Carhartt jacket for fitting purposes.
2. The above samples shall be for only the sizes ordered in the previous year.
3. As an alternative, Contractor may provide fitting services and measure/fit all employees. This would require being available at the City of Milpitas on three different occasions for up to three hours at a time.
4. Samples shall be with the same manufacturer, style and color as the orders being placed and upon completion of fittings can be cleaned, have the appropriate log applied and sold to the City.
5. New hires are subject to the same fitting requirements.
6. All fittings will be done prior to submission of the first order.
7. Final determination of "samples vs fitting, date and time" to be determined after the award.
8. All samples and/or fitting services shall be at no extra cost to the City.

IFB Title: Annual Clothing Requirements for City Employees

Annual Special Clothing Requirements for Public Works Staff  
Bid No. 2073

To: City of Milpitas  
Purchasing Division  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

Bid Summary Sheet  
THIS FORM MUST BE PRINTED OUT, COMPLETED AND  
UPLOADED BACK INTO THE PUBLIC PURCHASE SYSTEM

(All amounts include City logos and embroidery; no department or section name required)

ITEM	Manufacturer	DESCRIPTION	QUANTITY	ITEM AMOUNT	
1	Hanes	T- w/pocket, charcoal grey/w, navy blue, silk-screened City Logo; #35190 Hanes Beefy, 6.1 oz, 100% cotton	189	1456.35	
2	Port & Co	Long Sleeve T w/pocket, charcoal grey/w, navy blue, silk-screened City Logo #PC61LSP	98	917.60	
3	Ultra Club	Polo short sleeve T w/pocket. Charcoal grey/q, navy blue, embroidered City Logo; #8534 Classic Polo, 6.2 oz, 100% cotton pique	92	1492.00	
4	Ultra Club	Beanie, long, charcoal grey/w, navy blue, embroidered City Logo; Knit/w cuff, #8130	26	156.00	
4	Ultra Club	Beanie, short, charcoal grey/w, navy blue, embroidered City Logo, K, #8131	34	204.00	
5	Fruit of the Loom	Crew neck sweatshirt, charcoal grey/w, navy blue, embroidered City Logo; #82300, 12 oz, 70% cotton/30% polyester	39	528.00	
6	Fruit of the Loom	Pullover hooded sweatshirt, charcoal grey/w, navy blue, embroidered City Logo; #82130, 12 oz, 70% cotton/30% polyester	31	774.00	
7	Fruit of the Loom	Full zip hooded sweatshirt, charcoal grey/w, navy blue, embroidered City Logo; #82230, 12 oz, 70% cotton/30% polyester	76	1900.00	
8	Dorfinan Pacific	Brush Twill Safari Hat, S, M, L, XL, XXL; Kaki, #864M; No Logo	31	434.00	
9	Yupoong	Ball Cap, charcoal grey/w, navy blue, embroidered City Logo; S/M, cotton, low profile flexfit, #6377	19	171.00	
10	Yupoong	Ball Cap, charcoal grey/w, navy blue, embroidered City Logo; L/XL, cotton, low profile flexfit, #6377	101	908.00	
11	Richardson	Ball Cap, charcoal grey/w, navy blue, embroidered City Logo; S/M, Pro #7, Model #514	22	220.00	
12	Carhartt	Men's Duck Traditional Coat/Artic Quilt-lined Jackets; embroidered City Logo; Black in Color.	44	3744.00	
IMPORTANT NOTE: The Detailed Unit Pricing Bid Sheet (Attachment "A") must be attached with this bid form.				Taxable Amount	12905.65
				Tax @ 8.75%	112.52
Award of bid will be made to the lowest responsible and responsive bidder of the Total Base Bid and Unit Pricing for as-needed ordered items:				Shipping & Handling	400.00
				Total Bid Amount	13418.35

By filling in the Addenda Number and checking the blank at the end of the sentence, Bidder acknowledges receipt of Addenda Number(s) 1, 2, 3, and all questions, if any, listed on the Public Purchase website ✓.

**Corrections**

Taxable Amount: \$12,905.05

Sales Tax @ 8.756% \$ 1,129.19

Shipping & Handling\$ 400.00

**TOTAL BID:** \$14,434.24

Amount Written in Words. This bid will be awarded based upon the total amount bid as written in words. Where there is a discrepancy between words and figures, WORDS WILL GOVERN. Where there is a discrepancy between item unit price and extended total, UNIT PRICE WILL GOVERN.

Please check your calculations before submitting your bid; the City of Milpitas will not be responsible for Bidder miscalculations.

Maximum Completion or Delivery Time: 60 Days from receipt of order or notice to proceed.

Bidder shall complete the following required information:

1. All or None Offer. This bid is offered on an all or none basis? YES (Yes/No)
2. Delivery. Delivery time after receipt of order: 45 days. Delivery will be made via (check applicable means of delivery): ☒ Bidder's Truck ☐ Commercial Truck ☐ Train ☐ Sea ☐ Air
3. Samples. Embroidery and silk screen samples may be required.
4. Minimum Warranty. The minimum acceptable warranty is:
  - a. Scope: Failure due to defects in material and workmanship, and shall provide for the replacement of any such garments as may be defective at no additional cost to the City.
  - b. Term: One (1) year, from date of acceptance by the City of Milpitas.
5. Warranty Response Time. Maximum response time after notification of warranty issue: 30 days.

Term of Offer. It is understood and agreed that this bid may not be withdrawn for a period of ninety (90) days from the Bid Submittal Deadline, and at no time in case of successful Bidder.

Bidder's Acknowledgement of Understanding Bid Terms and Conditions. Signature below verifies that Bidder has read, understands, and agrees to the conditions contained herein and on all of the attachments and agenda.

Representations Made Under Penalty Of Perjury. The representations herein are made under penalty of perjury. We hereby offer to sell the City of Milpitas the above item(s) at the prices shown and under the terms and conditions herein, attached, or incorporated by referenced.

ALL-INE UNIFORM SALES  
Bidder Name (Person, Firm, Corp.)  
80 GILMAN AVE SUITE 25  
Address  
CAMPBELL, CA 95008  
City, State, Zip Code  
408 376 0876  
Telephone Number

M L  
Signature of Authorized Representative  
MATTHEW ADAMS  
Name of Authorized Representative  
OWNER  
Title of Authorized Representative  
SALES@ALLINEUNIFORMS.COM  
E-Mail Address



**ATTACHMENT "A" - DETAILED UNIT PRICING BID SHEET**  
**IFB # 2073; Annual Clothing Requirements for City Employees**  
 (All amounts include City logos and embroidery; no department or section name required)

Bidder Name: \_\_\_\_\_ ALL-LINE UNIFORM SALES \_\_\_\_\_

		<b>SILK-SCREENED LOGOS</b>				
ITEM #	MANUFACTURER	ITEM DESCRIPTIONS	QTY.	Unit Price	Ext. Price	
1	Hanes	1- w/pocket, charcoal grey/w, navy blue, #35190 Beefy, 6.1 oz, 100% cotton (Silk-screened City logo)				
Sizes	M	T- w/pocket, charcoal grey/w, navy blue, #35190 Beefy, 6.1 oz, 100% cotton (Silk-screened City logo)	0		\$0.00	
	L	T- w/pocket, charcoal grey/w, navy blue, #35190 Beefy, 6.1 oz, 100% cotton (Silk-screened City logo)	41	\$7.00	\$287.00	
	XL	T- w/pocket, charcoal grey/w, navy blue, #35190 Beefy, 6.1 oz, 100% cotton (Silk-screened City logo)	37	\$7.00	\$259.00	
	XXL	T- w/pocket, charcoal grey/w, navy blue, #35190 Beefy, 6.1 oz, 100% cotton (Silk-screened City logo)	80	\$8.25	\$660.00	
	2XL	T- w/pocket, charcoal grey/w, navy blue, #35190 Beefy, 6.1 oz, 100% cotton (Silk-screened City logo)	27	\$8.25	\$222.75	
	3XL	T- w/pocket, charcoal grey/w, navy blue, #35190 Beefy, 6.1 oz, 100% cotton (Silk-screened City logo)	0		\$0.00	
	4XL	T- w/pocket, charcoal grey/w, navy blue, #35190 Beefy, 6.1 oz, 100% cotton (Silk-screened City logo)	0		\$0.00	
	LXTL	T- w/pocket, charcoal grey/w, navy blue, #35190 Beefy, 6.1 oz, 100% cotton (Silk-screened City logo)	4	\$6.95	\$27.80	
Total			189		\$1,458.55	
2	Port & Co.	Long sleeve T w/pocket, charcoal grey/w, navy blue, #PC61LSP. (Silk-screened City logo)	QTY.	Unit Price	Ext. Price	
Sizes	M	Long sleeve T w/pocket, charcoal grey/w, navy blue, #PC61LSP. (Silk-screened City logo)	0			
	L	Long sleeve T w/pocket, charcoal grey/w, navy blue, #PC61LSP. (Silk-screened City logo)	7	\$7.95	\$55.65	
	XL	Long sleeve T w/pocket, charcoal grey/w, navy blue, #PC61LSP. (Silk-screened City logo)	17	\$7.95	\$135.15	
	XXL	Long sleeve T w/pocket, charcoal grey/w, navy blue, #PC61LSP. (Silk-screened City logo)	37	\$9.95	\$368.15	
	2XL	Long sleeve T w/pocket, charcoal grey/w, navy blue, #PC61LSP. (Silk-screened City logo)	15	\$9.95	\$149.25	
	3XL	Long sleeve T w/pocket, charcoal grey/w, navy blue, #PC61LSP. (Silk-screened City logo)	17	\$9.95	\$169.15	
	4XL	Long sleeve T w/pocket, charcoal grey/w, navy blue, #PC61LSP. (Silk-screened City logo)	0		\$0.00	
	LXTL	Long sleeve T w/pocket, charcoal grey/w, navy blue, #PC61LSP. (Silk-screened City logo)	5	\$7.95	\$39.75	
Total			98		\$917.10	

**EMBROIDERED LOGOS**

ITEM #	MANUFACTURER	ITEM DESCRIPTIONS	QTY.	Unit Price	Ext. Price	
3	Ultra Club	Polo short sleeve T w/pocket. Charcoal grey/q, navy blue; #8534 Classic Polo, 6.2 oz, 100% cotton pique. (Embroidered City Logo)				
Sizes	M	Polo short sleeve T w/pocket. Charcoal grey/w, navy blue; #8534 Classic Polo, 6.2 oz, 100% cotton pique. (Embroidered City Logo)	7	\$15.00	\$105.00	
	L	Polo short sleeve T w/pocket. Charcoal grey/w, navy blue; #8534 Classic Polo, 6.2 oz, 100% cotton pique. (Embroidered City Logo)	12	\$15.00	\$180.00	

**ATTACHMENT "A" - DETAILED UNIT PRICING BID SHEET**  
**IFB # 2073; Annual Clothing Requirements for City Employees**  
 (All amounts include City logos and embroidery; no department or section name required)

Bidder Name: **ALL-LINE UNIFORM SALES**

	XL	Polo short sleeve T w/pocket. Charcoal grey/w, navy blue; #8534 Classic Polo, 6.2 oz, 100% cotton pique. (Embroidered City Logo)	13	\$15.00	\$195.00
	XXL	Polo short sleeve T w/pocket. Charcoal grey/w, navy blue; #8534 Classic Polo, 6.2 oz, 100% cotton pique. (Embroidered City Logo)	34	\$16.00	\$544.00
	2XLT	Polo short sleeve T w/pocket. Charcoal grey/w, navy blue; #8534 Classic Polo, 6.2 oz, 100% cotton pique. (Embroidered City Logo)	12	\$18.00	\$216.00
	3XL	Polo short sleeve T w/pocket. Charcoal grey/w, navy blue; #8534 Classic Polo, 6.2 oz, 100% cotton pique. (Embroidered City Logo)	14	\$18.00	\$252.00
Total			92		\$1,492.00

4	Ulira Club	Beanie, long, charcoal grey/w, navy blue; Knit/w cuff, #8130. (Embroidered City Logo)	QTY.	Unit Price	Ext. Price
Sizes	S	Beanie, long, charcoal grey/w, navy blue; Knit/w cuff, #8130. (Embroidered City Logo)	1	\$6.00	\$6.00
	M	Beanie, long, charcoal grey/w, navy blue; Knit/w cuff, #8130. (Embroidered City Logo)	2	\$6.00	\$12.00
	L	Beanie, long, charcoal grey/w, navy blue; Knit/w cuff, #8130. (Embroidered City Logo)	13	\$6.00	\$78.00
	XL	Beanie, long, charcoal grey/w, navy blue; Knit/w cuff, #8130. (Embroidered City Logo)	7	\$6.00	\$42.00
	XXL	Beanie, long, charcoal grey/w, navy blue; Knit/w cuff, #8130. (Embroidered City Logo)	1	\$6.00	\$6.00
	2XLT	Beanie, long, charcoal grey/w, navy blue; Knit/w cuff, #8130. (Embroidered City Logo)	2	\$6.00	\$12.00
Total			26		\$156.00

5	Ulira Club	Beanie, short, charcoal grey/w, navy blue, K, #8131. (Embroidered City Logo)	QTY.	Unit Price	Ext. Price
Sizes	S	Beanie, short, charcoal grey/w, navy blue, K, #8131. (Embroidered City Logo)	2	\$6.00	\$12.00
	M	Beanie, short, charcoal grey/w, navy blue, K, #8131. (Embroidered City Logo)	2	\$6.00	\$12.00
	L	Beanie, short, charcoal grey/w, navy blue, K, #8131. (Embroidered City Logo)	6	\$6.00	\$36.00
	XL	Beanie, short, charcoal grey/w, navy blue, K, #8131. (Embroidered City Logo)	12	\$6.00	\$72.00
	XXL	Beanie, short, charcoal grey/w, navy blue, K, #8131. (Embroidered City Logo)	12	\$6.00	\$72.00
Total			34		\$204.00

6	Fruit of the Loom	Crew neck sweatshirt, charcoal grey/w, navy blue #82300, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	QTY.	Unit Price	Ext. Price
Sizes	M	Crew neck sweatshirt, charcoal grey/w, navy blue #82300, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	1	\$12.00	\$12.00
	L	Crew neck sweatshirt, charcoal grey/w, navy blue #82300, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	6	\$12.00	\$72.00
	XL	Crew neck sweatshirt, charcoal grey/w, navy blue #82300, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	17	\$12.00	\$204.00
	XXL	Crew neck sweatshirt, charcoal grey/w, navy blue #82300, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	10	\$16.00	\$160.00

IFB 2073 Due:5/30/14; 2:00 p.m.

Page 2 of 5

**ATTACHMENT "A" - DETAILED UNIT PRICING BID SHEET**  
**IFB # 2073: Annual Clothing Requirements for City Employees**  
 (All amounts include City logos and embroidery; no department or section name required)

Bidder Name: **ALL-LINE UNIFORM SALES**

	3XL	Crew neck sweatshirt, charcoal grey/w, navy blue #82300, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	4	\$16.00	\$64.00
	5XLT	Crew neck sweatshirt, charcoal grey/w, navy blue #82300, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	1	\$16.00	\$16.00
Total			39		\$528.00

7	Fruit of the Loom	Pullover hooded sweatshirt, charcoal grey/w, navy blue; #82130, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	QTY.	Unit Price	Ext. Price
Sizes	L	Pullover hooded sweatshirt, charcoal grey/w, navy blue; #82130, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	5	\$17.75	\$88.75
	XL	Pullover hooded sweatshirt, charcoal grey/w, navy blue; #82130, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	7	\$17.75	\$124.25
	XXL	Pullover hooded sweatshirt, charcoal grey/w, navy blue; #82130, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	8	\$24.00	\$192.00
	XXLT	Pullover hooded sweatshirt, charcoal grey/w, navy blue; #82130, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	4	\$24.00	\$96.00
	3XL	Pullover hooded sweatshirt, charcoal grey/w, navy blue; #82130, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	2	\$24.00	\$48.00
	7XLT	Pullover hooded sweatshirt, charcoal grey/w, navy blue; #82130, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	5	\$45.00	\$225.00
Total			31		\$774.00

8	Fruit of the Loom	Full zip hooded sweatshirt, charcoal grey/w, navy blue; #82230, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	QTY.	Unit Price	Ext. Price
Sizes	M	Full zip hooded sweatshirt, charcoal grey/w, navy blue; #82230, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	4	\$22.00	\$88.00
	L	Full zip hooded sweatshirt, charcoal grey/w, navy blue; #82230, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	10	\$22.00	\$220.00
	XL	Full zip hooded sweatshirt, charcoal grey/w, navy blue; #82230, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	29	\$22.00	\$638.00
	XXL	Full zip hooded sweatshirt, charcoal grey/w, navy blue; #82230, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	9	\$26.00	\$234.00
	XXLT	Full zip hooded sweatshirt, charcoal grey/w, navy blue; #82230, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	14	\$29.00	\$406.00
	3XL	Full zip hooded sweatshirt, charcoal grey/w, navy blue; #82230, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	6	\$29.00	\$174.00
	4XL	Full zip hooded sweatshirt, charcoal grey/w, navy blue; #82230, 12 oz, 70% cotton/30% polyester. (Embroidered City Logo)	4	\$35.00	\$140.00
Total			76		\$1,900.00

9	Yupoong	Ball Cap, charcoal grey/w, navy blue; S/M, cotton, low profile flexfit, #6377. (Embroidered City Logo)	QTY.	Unit Price	Ext. Price
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IFB 2073 Due:5/30/14; 2:00 p.m.

Page 3 of 5

**ATTACHMENT "A" - DETAILED UNIT PRICING BID SHEET**  
**IFB # 2073; Annual Clothing Requirements for City Employees**  
 (All amounts include City logos and embroidery; no department or section name required)

bidder Name: **ALL-LINE UNIFORM SALES**

Sizes	S	Ball Cap, charcoal grey/w, navy blue; S/M, cotton, low profile flexfit, #6377. (Embroidered City Logo)	5	\$9.00	\$45.00
	M	Ball Cap, charcoal grey/w, navy blue; S/M, cotton, low profile flexfit, #6377. (Embroidered City Logo)	14	\$9.00	\$126.00
Total			19		\$171.00

10	Yupoong	Ball Cap, charcoal grey/w, navy blue; L/XL, cotton, low profile flexfit, #6377. (Embroidered City Logo)	QTY.	Unit Price	Ext. Price
Sizes	L	Ball Cap, charcoal grey/w, navy blue; L/XL, cotton, low profile flexfit, #6377. (Embroidered City Logo)	25	\$9.00	\$225.00
	XL	Ball Cap, charcoal grey/w, navy blue; L/XL, cotton, low profile flexfit, #6377. (Embroidered City Logo)	51	\$9.00	\$459.00
	XXL	Ball Cap, charcoal grey/w, navy blue; L/XL, cotton, low profile flexfit, #6377. (Embroidered City Logo)	20	\$9.00	\$180.00
	XXLT	Ball Cap, charcoal grey/w, navy blue; L/XL, cotton, low profile flexfit, #6377. (Embroidered City Logo)	5	\$9.00	\$45.00
Total			101		\$809.00

11	Richardson	Ball Cap, charcoal grey/w, navy blue; S/M, Pro #7, Model #514. (Embroidered City Logo)	QTY.	Unit Price	Ext. Price
Sizes	M	Ball Cap, charcoal grey/w, navy blue; S/M, Pro #7, Model #514. (Embroidered City Logo)	1	\$10.00	\$10.00
	L	Ball Cap, charcoal grey/w, navy blue; S/M, Pro #7, Model #514. (Embroidered City Logo)	2	\$10.00	\$20.00
	XL	Ball Cap, charcoal grey/w, navy blue; S/M, Pro #7, Model #514. (Embroidered City Logo)	17	\$10.00	\$170.00
	XXL	Ball Cap, charcoal grey/w, navy blue; S/M, Pro #7, Model #514. (Embroidered City Logo)	2	\$10.00	\$20.00
Total			22		\$220.00

12	Carhartt	Men's Duck Traditional Coat/Arctic Quilt-lined Jackets; (Embroidered City Logo)	QTY.	Unit Price	Ext. Price
Sizes	M	Men's Duck Traditional Coat/Arctic Quilt-lined Jackets; Black; 12 oz., heavyweight, firm-hand, 100% ring spun cotton duck with Arctic weight polyester insulation and Pleated elbows; #COO3; Blk Color. (Embroidered City Logo-Madeira USA 1843 Blue)	3	\$84.00	\$252.00
	L	Men's Duck Traditional Coat/Arctic Quilt-lined Jackets; Black; 12 oz., heavyweight, firm-hand, 100% ring spun cotton duck with Arctic weight polyester insulation and Pleated elbows; #COO3; Blk Color. (Embroidered City Logo-Madeira USA 1843 Blue)	11	\$84.00	\$824.00
	XL	Men's Duck Traditional Coat/Arctic Quilt-lined Jackets; Black; 12 oz., heavyweight, firm-hand, 100% ring spun cotton duck with Arctic weight polyester insulation and Pleated elbows; #COO3; Blk Color. (Embroidered City Logo-Madeira USA 1843 Blue)	14	\$84.00	\$1,176.00
	XXL	Men's Duck Traditional Coat/Arctic Quilt-lined Jackets; Black; 12 oz., heavyweight, firm-hand, 100% ring spun cotton duck with Arctic weight polyester insulation and Pleated elbows; #COO3; Blk Color. (Embroidered City Logo-Madeira USA 1843 Blue)	4	\$84.00	\$336.00
	2XL	Men's Duck Traditional Coat/Arctic Quilt-lined Jackets; Black; 12 oz., heavyweight, firm-hand, 100% ring spun cotton duck with Arctic weight polyester insulation and Pleated elbows; #COO3; Blk Color. (Embroidered City Logo-Madeira USA 1843 Blue)	5	\$88.00	\$440.00

**ATTACHMENT "A" - DETAILED UNIT PRICING BID SHEET**  
**IFB # 2073; Annual Clothing Requirements for City Employees**  
 (All amounts include City logos and embroidery; no department or section name required)

Bidder Name: **ALL-LINE UNIFORM SALES**

3XL	Men's Duck Traditional Coat/Arctic Quilt-lined Jackets; Black; 12 oz., heavyweight, firm-hand, 100% ring spun cotton duck with Arctic weight polyester insulation and Pleated elbows; #COO3; Blk Color. (Embroidered City Logo-Madeira USA 1843 Blue)	4	\$88.00	\$352.00
4XL	Men's Duck Traditional Coat/Arctic Quilt-lined Jackets; Black; 12 oz., heavyweight, firm-hand, 100% ring spun cotton duck with Arctic weight polyester insulation and Pleated elbows; #COO3; Blk Color. (Embroidered City Logo-Madeira USA 1843 Blue)	2	\$88.00	\$176.00
LXTL	Men's Duck Traditional Coat/Arctic Quilt-lined Jackets; Black; 12 oz., heavyweight, firm-hand, 100% ring spun cotton duck with Arctic weight polyester insulation and Pleated elbows; #COO3; Blk Color. (Embroidered City Logo-Madeira USA 1843 Blue)	1	\$88.00	\$88.00
<b>Total</b>		<b>44</b>		<b>\$3,744.00</b>

ITEM #	MANUFACTURER	NO CITY LOGO ITEM DESCRIPTIONS	QTY.	Unit Price	Ext.Price
13	Dorfinan Pacific	Brush Twill Safari Hat; Kaki, #864M			
Sizes	S	Brush Twill Safari Hat; Kaki, #864M	2	\$14.00	\$28.00
	M	Brush Twill Safari Hat; Kaki, #864M	6	\$14.00	\$84.00
	L	Brush Twill Safari Hat; Kaki, #864M	12	\$14.00	\$168.00
	XL	Brush Twill Safari Hat; Kaki, #864M	5	\$14.00	\$70.00
	XXL	Brush Twill Safari Hat; Kaki, #864M	6	\$14.00	\$84.00
<b>Total</b>			<b>31</b>		<b>\$434.00</b>

Merchandise Totals \$12,905.85

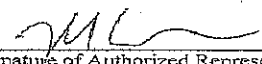
Sales Tax @ 8.75% \$112.92

Shipping and Handling \$400.00

**TOTAL BID AMOUNT \$13,418.57**

**Representations Made Under Penalty Of Perjury.** The representations herein are made under penalty of perjury. We hereby offer to sell the City of Milpitas the above item(s) at the prices shown and under the terms and conditions herein, attached, or incorporated by referenced.

Bidder Name (Person, Firm, Corp.)  
**ALL-LINE UNIFORM SALES**  
**800 L MAN AVE, STE 25**  
**CAMPBELL, CA 95008**  
 Address  
 City, State, Zip Code  
**408 376 0876**  
 Telephone Number  
**SALES@ALL-LINE-UNIFORMS.COM**  
 E-Mail Address

  
 Signature of Authorized Representative  
**MATTHEW W. ADAMS**  
 Name of Authorized Representative  
**OWNER**  
 Title of Authorized Representative  
**408 376 0876**  
 Facsimile Number

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AWARDING TO AND APPROVING A CONTRACT WITH JORDAN C. LEE, AN INDIVIDUAL DBA “AAA BACKFLOW PREVENTION SERVICES,” FOR BACKFLOW TESTING, CERTIFICATION AND MAINTENANCE REPAIR SERVICES AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO EXERCISE UP TO THREE (3) ANNUAL RENEWAL OPTIONS, SUBJECT TO APPROPRIATION OF FUNDS AND WITHOUT FURTHER CITY COUNCIL APPROVAL**

**WHEREAS**, on May 27, 2014, City staff released an Invitation For Bid (IFB) #2073 soliciting bids for Backflow Testing and Maintenance Repair Services, which was published in the *Milpitas Post* local newspaper, on the City’s website and through the *Public Purchase* electronic procurement website; and

**WHEREAS**, on June 20, 2014, three (3) bids were received in response to the IFB and Jordan C. Lee, an individual dba “AAA Backflow Prevention Services” was deemed the lowest, responsible and responsive bidder; and

**WHEREAS**, the City’s Purchasing Agent recommends the City Council award to and approve the contract between the City and AAA Backflow Prevention Services for the period from August 6, 2014 to August 5, 2016 in the amount not to exceed Forty-Nine Thousand Three-Hundred Ten Dollars (\$49,310); and

**WHEREAS**, City staff also requests authority for the City Manager or designee to exercise up to three (3) annual renewal options in the annual amount of Twenty-Four Thousand Six-Hundred, Fifty-Five Dollars (\$24,655) with annual fee increases not to exceed the Consumer Price Index or three percent (3%) each year, whichever is less, without further City Council approval and subject to appropriation of funds.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council awards to and approves the contract with Jordan C. Lee, an individual dba “AAA Backflow Prevention Services” for Backflow Testing, Certification and Maintenance Repair Services from August 6, 2014 to August 5, 2016 in the amount not to exceed Forty-Nine Thousand, Three-Hundred, Ten Dollars (\$49,310), a copy of which is on file with the City of Milpitas Purchasing Agent.
3. The City Council authorizes the City Manager or designee to extend the term of the contract by exercising up to three (3) annual renewal options in the annual amount up to Twenty-Four Thousand Six-Hundred Fifty-Five Dollars (\$24,655) with annual increases based on the Consumer Price Index or up to three percent (3%), whichever is lower, subject to appropriation of funds and without further City Council approval.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM

\_\_\_\_\_  
Michael J. Ogaz, City Attorney



**City of Milpitas  
CONTRACT FOR SERVICES**

**Project:** Backflow Testing and Maintenance Repair Services

**Bid No:** 2072

**Initial Amount of Contract:** \$49,310

THIS CONTRACT, made this 6th day of August, 2014, by and between the City of Milpitas, a municipal corporation of the State of California, hereinafter referred to as "City" and Jordan C. Lee, an individual dba **AAA Backflow Prevention Services**, hereinafter referred to as "Contractor".

WITNESSETH:

A. WHEREAS, the City has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and

B. WHEREAS, said Specifications include:

1. Invitation For Bids and all Addenda
2. Specifications/Scope of Work
3. Instructions To Bidders
4. Terms and Conditions
5. Special Provisions For Services
6. List of Documents to be Returned with Bid
7. Bid Forms
8. Non-Collusion Affidavit
9. Bidder's Statement Regarding Insurance Coverage
10. Worker's Compensation Insurance Certificate
11. Bidder's Nondiscriminatory Employment Certificate
12. Notice of Option to Extend Contract

C. WHEREAS, Contractor has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the Contractor's Bid and further as agreed upon by the parties as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and Contractor's Bid, which are made a part hereof as though fully set forth, Contractor hereby agrees to complete the work at the prices and on the terms and conditions therein contained, and the City of Milpitas hereby employs the Contractor and agrees to pay the Contractor the contract prices therein provided for the fulfillment of the work and the performance of the covenants therein set forth.

The initial term of this Contract is from August 6th, 2014 to August 5, 2016 ("Initial Term") in the amount not-to-exceed Forty-Nine Thousand Three Hundred-Ten Dollars (\$49,310). The City

reserves the right at its sole discretion to extend this Contract on an annual basis for up to three (3) years (with the final option year automatically expiring no later than June 30, 2019) and in an annual amount not-to-exceed Twenty-Four Thousand Six Hundred Fifty-Five Dollars (\$24,655) by providing written notice to Contractor prior to the expiration of the then applicable term and in the form attached in the Specification entitled "Notice of Exercise of Option to Extend Contract". The City will make monthly payments within thirty (30) days receipt of each approved invoice.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

CITY OF MILPITAS,  
A Municipal Corporation

CONTRACTOR:  
AAA Backflow Prevention Services

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Jordan C. Lee, Owner (Sole Proprietor)

4949 Nadotti Rd.  
Stockton, Ca 95215  
Telephone: (209) 931-5253  
Facsimile: (209) 931-1916  
E-Mail address: [aaabackflow@comcast.net](mailto:aaabackflow@comcast.net)

Business Tax Compliance:  
Certificate No. \_\_\_\_\_  
FEIN: 20-4761961

Approved As To Form:

\_\_\_\_\_  
Mike Ogaz, City Attorney

Approved As To Content:

\_\_\_\_\_  
City Project/Contract Manager

ATTEST:

By: \_\_\_\_\_  
Mary Lavelle, City Clerk



## SPECIFICATIONS/SCOPE OF WORK

### Summary

Contractor must provide labor, materials, equipment, transportation and services to annually inspect, test, repair, replace, and report on all City maintained backflow prevention devices and accessories identified by the City of Milpitas. The warranty for all maintenance repairs and replacement work shall include labor and materials for a minimum of twelve months from the date that the City of Milpitas accepts the work as completed.

There are approximately 187 public backflow prevention assemblies located on or about City of Milpitas facilities. The chart below lists the various sizes and assembly type by quantities.

		Quantity By Assembly Type		
Device Size	Quantity by Total	Reduced Pressure (RP)	Pressure Vacuum Breaker	Double Check
3/4"	15	13		2
1"	37	32		5
1-1/4"	4	3		1
1-1/2"	47	41	1	5
2"	54	49		5
2-1/2"	3	2		1
3"	19	18		1
4"	6	6		
6"	2	2		
TOTALS	187	166	1	20

There are various brands of backflow prevention devices used by the City of Milpitas. However, the Febco 825Y represents the majority equipment manufacturer and model of the City's backflow prevention devices. The majority of devices are the reduced pressure devices in sizes 1", 1-1/2" and 2".

### Work Locations

A detailed list of all locations and facility staff contacts will be provided to the Contractor within five (5) business days after execution of the contract.

### Testing Work

- A sample template of the form to be used to conduct inspections has been provided as a part of IFB 2072.
- Upon contract award, tester(s) shall contact the City's representative for each facility to arrange for a site visit (which may include nights and weekends) to schedule and perform the backflow prevention assembly testing.
- The tester shall test each assembly in accordance with American Water Works Association, M14 most recently published manual.
- If necessary for access to the devices to be tested and as directed by the City, the Contractor may be required to trim landscaping.
- If necessary for access to the devices to be tested and as directed by the City, the Contractor may be required to cut padlocks.
- Cleaning and flushing of the assembly are included with testing work.

- Provide a written notice to the City at least two (2) business days prior to shutting off any water source that goes to a commercial/residential building.
- Test certification results shall be provided within one week after completing testing.
- Testing results shall include reasons for failure, if applicable and a description of estimated work necessary to fix the failure.

#### Optional Repair Services (Prevailing Wage Compliance Required)

In the event that any backflow device does not pass testing, it shall be, at the Public Works Department's discretion, the Contractor's responsibility to repair said device. Prior to commencing work, the Contractor shall receive a written work order from the City based upon its specific written quote for the required work and pricing established from its bid. Labor, materials/parts and equipment shall be the Contractor's responsibility. Repairs shall be performed pursuant to manufacturer recommendations. The work shall include a complete replacement of all consumable items such as rubber parts, O rings, seals, seat discs, diaphragms, etc. as part of complete repair kit on both check (or air inlet if it exists) valves and relief valve if it exists.

No mark-up will be authorized for materials/parts costing less than \$25.00 that is not included in the complete repair kit and the maximum mark-up shall be five percent (5%).

It is anticipated that ten (10%) of the devices may require the optional repair services. The repair cost shall include the cost to re-test and confirm the repair as meeting certification standards.

#### Optional Replacement Services (Prevailing Wage Compliance Required)

In the event that any backflow device does not pass testing, it shall be, at the Public Works Department's discretion, the Contractor's responsibility to replace said device. Prior to commencing work, the contractor shall receive a written work order from the City based upon: 1) Contractor's specific written quote for the required maintenance work; 2) Contractor's pricing established from its bid. Labor, materials/parts and equipment shall be the Contractor's responsibility.

The backflow device required for replacement option shall be a Febco 825Y (small size) or LF860 (larger size) or approved equal lead free reduced pressure backflow assembly as listed on (<http://fccchr.usc.edu/list.html>). The replacement work shall include concrete pad, backflow cage per standard drawing #734 and insulation bag per specifications, as authorized. The insulation bag shall have a minimum R13 factor. A Contractor's submittal of the manufacturer's cut sheet of the device, backflow cage, insulation bag, etc as part of the work during construction is required for approval and acceptance. Re-testing and certification of passed test result shall be included in this scope of replacement work.

#### Work Schedule

Annual testing will be performed within thirty (30) days of notification. Re-testing and off-season tests will generally have a shorter completion time. Unless otherwise approved by the Public Works Department, all work shall be performed during regular business hours, Monday – Friday during the hours of 8:00 am – 5:00 pm PST. The Contractor will confirm with the water customer the hours of water shutdown to perform the work.

The customer acknowledgement of the shutdown notice and a shutdown schedule identifying the location and shutdown date/time shall be submitted by the Contractor to the Public Works Department – Utilities Division for approval, prior to commencing work.

#### Equipment

All equipment used for testing must be properly calibrated.

The Contractor shall provide and maintain during the entire period of this contract, equipment sufficient in number, operational condition, and capacity to efficiently perform the work and render the services required by this contract. This includes sufficient “back-up” equipment to provide uninterrupted services should there be an equipment failure.

All vehicles must be maintained in good repair, appearance, and condition at all times while performing this scope of work. Equipment, machinery, component, or system failures that affect the safe operation of any equipment shall be corrected prior to using the equipment in the performance of this scope of work.

Contractor’s vehicles and mobile equipment shall be clearly marked with the company name and/or log, active telephone number and an identification number. Vehicles used within the scope of this contract shall be equipped with a minimum of one (1) amber rotating beacon or strobe light.

Bid #: 2072

Bid Title: Backflow Testing and Maintenance Repair Services

Bid Due Date: June 20, 2014

**BID FORM:**

**Backflow Testing and Maintenance Repair Services Bid Number 2072**

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND UPLOADED BACK INTO THE PUBLIC PURCHASE SYSTEM**

To: City of Milpitas  
Purchasing Division  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

From: AAA Backflow Prevention Services  
Name of Bidder  
4949 Nadoiti Rd  
Mailing Address  
Stockton, CA 95215  
City, State & Zip

The undersigned Bidder agrees he will contract with the City of Milpitas to provide all necessary labor, supervision, machinery, tools, apparatus, and other means of construction to do all the work and furnish all the materials specified in the contract in the manner and time therein prescribed, and that he will take in full payment the amount set forth hereon.

Bid No. 2072 Backflow Testing and Maintenance Repair Services, in its entirety and the following documents by this reference are hereby made a part of this contract:

- a. Invitation For Bids and Addenda
- b. Specifications/Scope of Work
- c. Instructions To Bidder
- d. Terms and Conditions
- e. Special Provisions For Services
- f. List of Documents to be Returned with Bid
- g. Bid Forms
- h. Sample Contract and Notice of Exercise of Option to Extend Agreement
- i. Non-Collusion Affidavit
- j. Bidder's Statement Regarding Insurance Coverage
- k. Worker's Compensation Insurance Certificate
- l. Bidder's Nondiscriminatory Employment Certificate
- m. Subcontractor's Listing (As applicable)
- n. Subcontractor's Acceptance of Specification Requirements (As applicable)
- o. Local Business Preference (As applicable)

Bidder acknowledges receipt of Addenda Number(s) 11, and Question/Answer documents posted for the IFB on the Public Purchase website. The cost of all labor, material, and equipment necessary for the completion of the work itemized, even though not shown or specified, shall be included in the unit price for the various items shown hereon. The City of Milpitas reserves the right to increase or decrease the quantity of any item or omit items as may be deemed necessary, and the same shall in no way affect or make void the contract. When increases or decreases are made, appropriate additions or deductions from the contract total price will be made at the stipulated unit price.

**BASE BID ITEMS**

**THIS FORM MUST BE PRINTED OUT, COMPLETED AND UPLOADED BACK INTO THE PUBLIC PURCHASE SYSTEM**

**Phase I. Inspection, Certification and Testing (FIXED BASE BID FOR TWO YEARS)**

ITEM	Assembly Type	Device Size	Total Devices	UNIT PRICE	EXTENDED AMOUNT
1.	Reduced Pressure (RP)	1/2"	13	\$ 65.00	\$ 845.00
2.	"	1"	32	\$ 65.00	\$ 2,080.00
3.	"	1-1/4"	3	\$ 65.00	\$ 195.00
4.	"	1-1/2"	41	\$ 65.00	\$ 2,665.00
5.	"	2"	49	\$ 65.00	\$ 3,185.00
6.	"	2-1/2"	2	\$ 65.00	\$ 130.00
7.	"	3"	18	\$ 65.00	\$ 1,170.00
8.	"	4"	6	\$ 65.00	\$ 390.00
9.	"	6"	2	\$ 65.00	\$ 130.00
		Subtotal	166		\$ 10,790.00
10.	Pressure Vacuum Breaker	1-1/2"	1	\$ 65.00	\$ 65.00
		Subtotal	1		\$ 65.00
11.	Double Check	3/4"	2	\$ 65.00	\$ 130.00
12.	"	1"	5	\$ 65.00	\$ 325.00
13.	"	1-1/4"	1	\$ 65.00	\$ 65.00
14.	"	1-1/2"	5	\$ 65.00	\$ 325.00
15.	"	2"	5	\$ 65.00	\$ 325.00
16.	"	2-1/2"	1	\$ 65.00	\$ 65.00
17.	"	3"	1	\$ 65.00	\$ 65.00
		Subtotal	20		\$ 1,300.00
		TOTAL	187		\$ 12,155.00

This work requires compliance with prevailing rate laws pursuant to the California Labor Code. As such, bidders are to provide the following Labor Wage information applicable to workers performing the scope of work for this project.

**2014 HOURLY LABOR RATES**  
 (Supervisor, Journeyman, Apprentice, Helper and etc.)

Trade and Labor Classification	Straight time	Over-time	Holidays & Sundays	Weekend	Night Shift
Plumber Helper	52.290				

## (OPTIONAL BID ITEMS-FIXED FOR TWO YEARS)

THIS FORM MUST BE PRINTED OUT, COMPLETED AND UPLOADED BACK INTO  
THE PUBLIC PURCHASE SYSTEM

## Phase II. Repairs (Includes re-testing/certification)

ITEM	Assembly Type	Device Size	Total Devices	UNIT PRICE
1.	Reduced Pressure (RP)	1/2"	13	\$25.00
2.	"	1"	32	\$25.00
3.	"	1-1/4"	3	\$50.00
4.	"	1-1/2"	41	\$50.00
5.	"	2"	49	\$50.00
6.	"	2-1/2"	2	\$100.00
7.	"	3"	18	\$100.00
8.	"	4"	6	\$100.00
9.	"	6"	2	\$100.00
		Subtotal	166	\$600.00
10.	Double Check	1/2"	2	\$10.00
11.	"	1"	5	\$10.00
12.	"	1-1/4"	1	\$25.00
13.	"	1-1/2"	5	\$45.00
14.	"	2"	5	\$25.00
15.	"	2-1/2"	1	\$50.00
16.	"	3"	1	\$50.00
		Subtotal	20	\$195.00
17.	Vacuum Breaker	1 1/2"	1	\$50.00

## Phase III. Replacements (Reduced Pressure Assembly and Includes re-testing/certification)

ITEM	Device Size	Unit Price- Base	Unit Price- Insulation Bag	Unit Price - backflow cage and pad
17.	1/2"	\$300.00	\$80.00	\$400.00
18.	1"	\$300.00	\$80.00	\$400.00
19.	1-1/4"	\$500.00	\$150.00	\$400.00
20.	1-1/2"	\$500.00	\$100.00	\$500.00
21.	2"	\$600.00	\$100.00	\$500.00
22.	2-1/2"	\$800.00	\$150.00	\$500.00
23.	3"	\$1,000.00	\$150.00	\$500.00
24.	4"	\$1,000.00	\$200.00	\$500.00
25.	6"	\$1,500.00	\$200.00	\$500.00

Each phase of the work is to be completed within 30 days. Unit prices are final regardless of the number of trips and valid for the duration of the initial contract period of two years.

Materials Mark-up: \_\_\_\_\_

(Note: No mark-up for materials costing less than \$25.00; Maximum allowed mark-up is 5 % over the actual cost.)

Where there is a discrepancy between item unit price and extended total, UNIT PRICE WILL GOVERN. Please check your calculations before submitting your bid as the City of Milpitas will not be responsible for Bidder miscalculations.

Award of bid will be made to the lowest responsible and responsive bidder based upon the unit prices indicated on this bid form. All prices are firm and fixed for the contract term.

Minimum Qualifications

The work required under this solicitation must be performed by a firm with certified backflow prevention assembly testers from Cal-Nevada American Water Works Association (AWWA). In addition, where repairs or replacement of system components or devices are necessary, the firm performing work required under this solicitation must be appropriately licensed by the California State Contractor's License Board (CSCLB). Copies of the requisite proof of certification and contractor's licenses are required to be submitted as part of the bid package.

Maximum Completion Time: 45 days Days from receipt of order or notice to proceed.

Subcontractor Information. Does this proposal include the use of subcontractors?

Yes \_\_\_\_\_ No x Initials JCL

If so, provide the subcontractor's list along with each subcontractor's name and respective Contractor's license number on the Subcontractor's Listing Form/Bid Form

<u>Sole Proprietorship</u>	
Type of Legal Entity (Corp, Partnership, Sole Proprietorship)	California Active Status (Registered, Corp, LLC)
<u>AAA Backflow Prevention Service</u>	<u>Jordan C Lee</u>
Bidder Name (Person, Firm, Corp.)	Signature of Authorized Representative
<u>4949 Nadotti Rd</u>	<u>Jordan C Lee</u>
Address	Name of Authorized Representative
<u>Stockton, CA 95215</u>	<u>Owner</u>
City, State, Zip Code	Title of Authorized Representative
<u>209-931-5253</u>	<u>209-931-1916</u>
Telephone Number	Facsimile Number
<u>aaabackflow@comcast.net</u>	<u>20-4761961</u>
E-Mail Address	FEIN

**City of Milpitas  
BID CLARIFICATION**

**BID FORM**

**Backflow Testing and Maintenance Repair Services Bid Number 2072**

**THIS FORM MUST BE E-MAILED BACK TO: nnelson@ci.milpitas.ca.gov  
BY NO LATER THAN: 2:00 p.m. June 24, 2014.**

From: AAA Backflow Prevention Services  
Name of Bidder

The undersigned Bidder submitted a bid in response to City of Milpitas IFB #2072, **Backflow Testing and Maintenance Repair Services** that requires further clarification in order to fairly evaluate all bids received.

The requested clarification pertains to Phases II and III of bids received by the bid due date. Please complete the following information:

**1. 2014 HOURLY LABOR RATES** (Use additional page as attachment if required)

Trade(s) (i.e. Plumber, Inspector, Laborer)	Labor Classification(s) (i.e. Journeyman, Apprentice, Helper and etc.)	Straight time	Over-time	Holidays & Sundays	Weekend	Night Shift
Plumber	owner	\$57.91	\$117.80	\$117.80	\$117.80	\$117.80

**2. Phases II & III Repairs and Replacement Unit Prices Quoted**  
(Please check one box for each phase Quoted)

Phase II Repair Unit Price Quoted		Phase III Replacement Unit Price Quoted	
<input checked="" type="checkbox"/> EACH	<input type="checkbox"/> TOTAL QUANTITY	<input checked="" type="checkbox"/> EACH	<input type="checkbox"/> TOTAL QUANTITY

All other terms and conditions of the bid offer shall remain the same as bid.

AAA Backflow Prevention Services  
Bidder Name (Person, Firm, Corp.)

Jordan Lee  
Name of Authorized Representative

AAAbackflow@Comcast.net  
E-Mail Address

Jordan C. Lee  
Signature of Authorized Representative

owner  
Title of Authorized Representative

209-931-5253 / 209-404-7955 cell  
Telephone Number



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE  
SOLE SOURCE PURCHASE AND INSTALLATION OF UNIFORM HAZARDOUS  
MATERIALS PROGRAM CONSOLIDATED FORMS SOFTWARE FROM ECOMPLIANCE,  
INC., FOR THE TERM OF AUGUST 6, 2014 TO AUGUST 5, 2015, AND AUTHORIZING THE  
CITY MANAGER TO EXTEND THE AGREEMENT ON AN ANNUAL BASIS FOR UP TO  
FOUR (4) ADDITIONAL YEARS SUBJECT TO APPROPRIATION OF FUNDS AND  
WITHOUT FURTHER CITY COUNCIL APPROVAL**

**WHEREAS**, under Assembly Bill 2286 approved by the State on September 29, 2008, all hazardous materials regulated businesses are required to electronically submit Uniform Hazardous Materials Program Consolidated Forms information via the California Environmental Reporting System (CERS); and

**WHEREAS**, all local implementing agencies are required to report inspection and enforcement actions, as well as exchange data identified under Title 27 of the California Code of Regulations (CCR) electronically via the internet to their respective Certified Unified Program Agency (CUPA); and

**WHEREAS**, the Milpitas Fire Department is a participating agency (PA) that reports to Santa Clara County Environmental Health Department as its CUPA; and

**WHEREAS**, the Santa Clara County Environmental Health Department has contracted out with eCompliance, Inc., a sole source, to develop a software product used to manage the creation, completion, management, and authentication and submittal of all Title 27 CCR data elements; and

**WHEREAS**, the eCompliance Service Agreement between the City of Milpitas and eCompliance, Inc., is primarily a license to use the finished software product for any and all activities related the Milpitas Fire Department's Hazardous Materials Program in accordance with AB 2286; and

**WHEREAS**, after conducting a good faith review of the available sources and pursuant to Milpitas Municipal Code Section I-2-3.09 "Sole Source Procurement," the City's Purchasing Agent has determined that eCompliance, Inc., is the only source for the purchase and support of the Uniform Hazardous Materials Program Consolidated Forms software; and

**WHEREAS**, the Purchasing Agent recommends the City Council approve the Agreement for purchase and installation of the Uniform Hazardous Materials Program Consolidated Forms software from eCompliance Inc., in the initial amount of Eight Thousand dollars (\$8,000.00) for the period of August 6, 2014 to August 5, 2015, and authorize the City Manager to extend the Agreement on an annual basis for up to four (4) additional years in the annual not-to-exceed amount of Three-Thousand Five Hundred dollars (\$3,500.00);renewal year amounts may be increased by the Consumer Price Index or up to 5%, whichever is less, and subject to appropriation of funds and without further City Council approval.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. eCompliance, Inc., is approved as the sole source provider of software and software maintenance for the Milpitas Fire Department Hazardous Materials Program and compliance with AB 2286 for a five (5) year term from August 6, 2014 to August 5, 2019 pursuant to Milpitas Municipal Code Section I-2-3.09.
3. The City Council hereby approves the Agreement with eCompliance, Inc. for the purchase and installation of eCompliance Uniform Hazardous Materials Program Consolidated Forms software in the initial annual amount of Eight Thousand dollars (\$8,000.00) and for the term of August 6, 2014 to August 5, 2015. A copy of the eCompliance, Inc., Agreement is attached to this Resolution as **Exhibit A**.
4. The City Manager is authorized to extend the Agreement on an annual basis for up to four (4) years in the annual amount not to exceed Three Thousand Five Hundred Dollars (\$3,500.00); renewal year amounts may be increased by the Consumer Price Index or up to 5%, whichever is less, and subject to appropriation of funds and without further City Council approval.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## **eCompliance Services Agreement**

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The following agreement was entered into this day 6<sup>th</sup> day of August, 2014 (“Effective Date”), between City of Milpitas, a municipal corporation of the State of California (“City” or “Client”), and **eCompliance, Inc.**, a California corporation (“eCompliance” or “Consultant”) which is located at 1663 Mission Street, Ste. 525, San Francisco, CA 94103.

### **RECITALS**

Client is required to collect the annual hazardous materials disclosures, including Hazardous Materials Business Plan (HMBP), Underground Storage Tank and Above Ground Petroleum Storage Tank programs electronically to comply with Assembly Bill 2286, as approved by the State of California on September 29, 2008 and may be amended from time to time.

eCompliance has developed a software product (“Product”) used to manage the creation, completion, management, authentication and submittal of all Title 27 of the California Code of Regulations data elements. The Product will also allow Internet access to the information by first responders as well as the public in accordance with the Emergency Planning and Community Right to Know Act (“EPCRA”). The Product enables users to comply with the electronic reporting requirements required by AB2286 (2008) and will permit seamless reporting by Client to the State via the Santa Clara County Department of Environmental Health (“County”) portal, as required by AB2286.

Client desires to purchase a license (one time set-up fee) to access and use the Product and agrees to pay an annual license and maintenance fee to eCompliance to provide on-going support and maintenance to the Product currently hosted by the County.

eCompliance possesses the skill, experience, ability, background and knowledge to provide the technical, operational, and training support services, to the (“Client”) and to Client regulated business community, necessary to best implement, integrate with and use the Product (“Services”).

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

#### **1. LICENSE TO USE PRODUCT**

Subject to the terms of this Agreement, Client is granted a license to use the Product for any and all activities related to the Client’s Hazardous Materials Program, compliance with AB 2286 and EPCRA. Client may not sell, license, rent, or distribute the Product. The Client is entitled to make and keep backup copies of the Product for purposes of safekeeping and disaster recovery.

#### **2. TECHNICAL, OPERATIONAL, SUPPORT, AND TRAINING SERVICES**

In consideration of the Fees for Services set forth in **Attachment A** and payable hereunder, eCompliance agrees to provide technical, operational and training services to (“Client”) and to Client regulated business community, the scope of which is defined in **Attachment B** and Statement of Work, needed to implement the Product and to integrate the Product with Client’s

existing databases and applications, including but not limited to remote technical assistance and consultation to the Client staff and regulated facilities in Client's jurisdiction. eCompliance agrees to provide to the Client as part of the technical, operational and training services hereunder all revisions, updates, improvements, modifications and enhancements (the "Updates") to the Product. An Update, once incorporated by the Client into a Product, shall be considered part of the Product for all purposes hereunder and shall not cause a loss of existing functionality. All such Updates will be provided to the Client free of charge.

### **3. COMPENSATION TO ECOMPLIANCE**

Client shall pay eCompliance for the services on an annual flat rate basis, plus a one-time set up fee in accordance with the Schedule of Billing Rates attached hereto as **Attachment A** and incorporated herein by reference, provided the annual license fee rate for the final four (4) renewal option years may be increased by the Consumer Price Index or up to five percent (5%), whichever is lower.

### **4. TERM**

The initial term of the Agreement shall be from August 6, 2014 to August 5, 2015 (the "Initial Term"). The City reserves the right at its sole discretion to extend this Agreement on an annual basis for up to an additional four (4) years and in the annual amount of up to Three-Thousand Five Hundred dollars (\$3,500.00) with the final option year automatically expiring no later than August 5, 2019. If the City decides to extend the agreement, it shall do so by providing written notice to eCompliance prior to the expiration of the then applicable term and in the form attached hereto as "Notice of Exercise of Option to Extend Agreement". A copy of the Notice of Exercise of Option to Extend Agreement is attached to this Agreement as **Exhibit C** and incorporated fully herein.

### **5. TERMINATION**

This Agreement may be terminated by Client at the end of the Initial Term or any successive Term by written notice no later than thirty (30) days prior to the end of the term. Additionally, Client may terminate this Agreement for convenience with thirty (30) days written notice to eCompliance.

### **6. INSURANCE REQUIREMENTS**

Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subagreement until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

## **6.1 Commercial General and Automobile Liability Insurance.**

**6.1.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**6.1.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (“any auto”). No endorsement shall be attached limiting the coverage.

**6.1.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

a. City and its officers, employees, agents, Contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured’s general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, Contractors, consultants, or volunteers.

b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, Contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.

e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

## **6.2 Requirements for All Policies.**

**6.2.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

**6.2.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

**6.2.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**6.2.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, Contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

**6.2.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at

Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**6.3 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**6.4 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**6.4.1** The City hereby waives the requirements for automobile liability insurance coverage previously set forth in this section 6.

## **7. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES**

Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, Contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, Contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **8. CONFIDENTIAL AND PROPRIETARY INFORMATION**

All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

With the exception of the Consultant's software licenses, all reports, documents or other materials developed or discovered by Contractor or any other person engaged directly or indirectly by Contractor to perform Contractor's services are City's property without restriction or limitation upon their use.

The City shall maintain ownership and control of the data throughout the contract period. Consultant shall have the right to use the data solely to perform services under the Agreement with the City. Consultant may not use the data, a subset of the data, and/or a summary of the data, or, cause or permit the data, a subset and/or a summary, to be used by any third party, outside the scope of the Agreement without the express written consent of the City.

Consultant shall provide City with a copy of the data in a mutually agreed upon format at regular intervals and at such additional times as the City deems appropriate. Contractor warrants that throughout all operational and maintenance activities the accuracy of the database and availability of content will be preserved.

## **9. MISCELLANEOUS**

This Agreement shall be governed by, and construed in accordance, with the laws of the California. This Agreement, together with any exhibits and/or appendices, attached hereto, contains the complete and exclusive understanding and agreement of the parties with respect to its subject matter and supersedes, merges, and replaces all prior writings, discussions, and understandings relating to such subject matter. This Agreement may only be amended by a written agreement duly executed by authorized representatives of both parties.

## **10. TAXES**

Consultant shall be responsible for payment of all taxes, fees contributions or charges applicable to the conduct of Consultant's business.



## 11. COMPLIANCE WITH LAWS

Consultant shall comply with all applicable laws, ordinances, codes and regulations (collectively, “laws”) of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

## 12. WARRANTY AGAINST INFRINGEMENT

If any article sold, license, or otherwise installed hereunder is covered, or is purported to be covered by any patent or copyright, Consultant agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from and against it by any and all suits, claims, judgments and costs instituted or recovered against it by any person or persons whomsoever, on account of the purchase, use or otherwise of such article by City in violation or claimed violation of any rights under patent or copyright.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date indicated below.

CITY OF MILPITAS (“City” or “Client”)

ECOMPLIANCE, INC. (“Consultant”)

\_\_\_\_\_  
Thomas C. Williams

\_\_\_\_\_  
eCompliance, Inc. Representative

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## ATTACHMENT A

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### Fee Schedule:

<b>One-time Setup Fees:</b>	<b>\$4,500.00</b>
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<b>License and Maintenance Fees</b>	
<b>Initial Term</b>	<b>\$3,500.00</b>

<b>Annual Rate for successive Terms</b>	<b>\$3,500.00</b>
(Fixed pricing for entire Term)	

### Payment Schedule:

<b>Description</b>	<b>Milestone/Date</b>	<b>Amount</b>
One-Time Setup Fee	Signing of Agreement	\$4,500.00
Initial Term Fees	Signing of Agreement	\$3,500.00

Annual License and Maintenance Fees for successive terms are due at the beginning of the Term, starting 8/06/2014.

## ATTACHMENT B

### Client Scope of Services (ONLY CHECKED SERVICES ARE PROVIDED)

PA Forms – Requirements: - Title 27 (CERS) - CUPA Billing - Custom PA	<input checked="" type="checkbox"/> HMBP <input checked="" type="checkbox"/> UST <input type="checkbox"/> Tiered Permitting <input checked="" type="checkbox"/> APSA
PA Database Integration	<input checked="" type="checkbox"/> One-time upload via Excel spreadsheet <input type="checkbox"/> Two-way Synchrony
Emergency Response	<input type="checkbox"/> Chemical classification dictionary <input type="checkbox"/> Internet-independent laptop configuration <input type="checkbox"/> Web-based Response Module <input type="checkbox"/> Smart Phone (Android) Response App
Submission Review	<input checked="" type="checkbox"/> Submission Review Criteria <input checked="" type="checkbox"/> Business Login Request Processing <input checked="" type="checkbox"/> Email Notifications
Billing	<input type="checkbox"/> Business to CUPA Interface – Mailing updates, online payments <input checked="" type="checkbox"/> PA to CUPA Interface – Set facility status, set fees, add facilities <input type="checkbox"/> Initial setup of Client fee calculations. Fee calculations include all fees related to HMBP, Hazardous Waste, Tiered Permitting, and Fire Code programs <input type="checkbox"/> Ability for Client to generate, print and email invoice to business.
Inspections and Enforcements	<input type="checkbox"/> Inspection and Enforcement Interface <input checked="" type="checkbox"/> Client Excel uploads from Existing Inspection application.
Training	<input type="checkbox"/> Regulated Business Training (2x) – Spanish session available <input type="checkbox"/> First Responder Training (1x) <input checked="" type="checkbox"/> Client Training (1x)
Application Hosting	<input checked="" type="checkbox"/> Externally hosted server. Web-based connectivity, data backup provided by County <input type="checkbox"/> PA hosted
Hardware	<input type="checkbox"/> _____ Pads <input type="checkbox"/> _____ Laptops
Support	<input checked="" type="checkbox"/> M-F 9AM – 5 PM Excluding Holidays–Via Phone, Email, Web <input type="checkbox"/> 24x7 365 days a year

## Statement of Work

### Project Plan

The table below outlines the high-level tasks involved in a successful Product implementation. This serves as a starting point and will be refined as the project commences and delivered to the Client as a formal project plan in the form of a project backlog list of tasks.

Task	Estimated Duration	Responsible Resource
Create Product Submission Forms	3 Weeks	Client and ECompliance
Upload of Data from Clients database via excel Spread Sheet	1 Week	Client and ECompliance
Submission Review Criteria	2 Weeks	Client and ECompliance
Email Notifications to client of new/modified submittals to portal	2 Weeks	Client and ECompliance
Client Training	One training 2 hrs	Client and ECompliance
Business Community Training	Two Trainings- Each training 2 hours	Client and ECompliance

## Product Training

Product training is delivered to Client onsite and remotely. Onsite training is conducted at Clients location. Remote training is conducted over the Internet using Web conferencing tools and telephone services. Prior to each training session, ECompliance will deliver a training agenda to Client. One training session will be provided to the Client.

A minimum of two (2) training sessions will be provided to the regulated business community. The Client is responsible for providing the training facility and notifying the regulated business community of the two (2) training events prior to their occurrence.

Training schedules will be coordinated with Client. ECompliance requires a two week prior notice to ensure trainer availability.

**ATTACHMENT C****NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE and DATE:</b>	
<b>CONTRACTOR Name and Address:</b>	
<b>DATE OF OPTION:</b>	

*(date the notice is sent must be consistent with the time for exercise set forth in Agreement)*

Pursuant to the terms of the original Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

<b>OPTION NO.</b>	
-------------------	--

**NEW OPTION TERM**

Begin date:	
End date:	

☐ **CHANGES IN RATE OF COMPENSATION**

<b>Percentage change in CPI upon which adjustment is based:</b>	
---	--

Pursuant to Section \_\_\_\_ of the Agreement the Rates of Compensation are hereby adjusted as follows:

*(use attachment if necessary)*

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
--	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF Milpitas a municipal corporation  By _____  Name of Authorized Representative: _____  Title of Authorized Representative: _____
--

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING FINAL  
ACCEPTANCE OF CITY HALL AUDIO VISUAL EQUIPMENT SYSTEM UPGRADE PROJECT NO. 9001,  
AND RELEASE OF THE CONTRACTOR'S BOND**

**WHEREAS**, certain improvements were installed by the City Hall Audio Visual System Upgrade, Project No. 9001, under and pursuant to the provisions of an improvement contract between the City of Milpitas, a municipal corporation of the State of California, and PCD, Inc.; and

**WHEREAS**, said contractor, as principal, and the Contractors Bonding and Insurance Company, as surety, executed a certain faithful performance bond conditioned upon the faithful performance of the provisions of said improvement contract and upon the faithful performance of all improvement work required thereunder; and

**WHEREAS**, said improvements were completed, finally inspected by the City Engineer of the City of Milpitas, and accepted; and

**WHEREAS**, a period of one year or more has expired after the date of said acceptance of said improvements; and

**WHEREAS**, the City Engineer has advised said City Council that said contractor has remedied, restored, repaired, or replaced at its sole expense and to the satisfaction of said City Engineer all defects, damages, or imperfections, if any there were, due to or arising from faulty materials or workmanship and appearing within said period of one year from the date of acceptance; and

**WHEREAS**, said City Engineer recommends to the City Council that said faithful performance bond be released.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City of Milpitas does finally accept said improvements. That certain performance bond furnished by the above-named contractor, as principal, and the above-named surety in connection with those certain improvements for the above-designated project, is hereby released and discharged; provided, however, that nothing herein contained shall in any way be deemed to be a waiver, release or relinquishment by City of any obligations imposed upon the contractor or its surety, or sureties, by law or by the above-referenced improvement contract, save and except those obligations specifically mentioned herein.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF MILPITAS AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 4, 2014 A BALLOT MEASURE PROPOSAL TO ADD CHAPTER 8 TO TITLE III OF THE MUNICIPAL CODE REGARDING ISSUANCE OF A LICENSE TO OPERATE A CARDROOM IN COMPLIANCE WITH STATE LAW AND IMPOSING A CARDROOM TAX AT THE RATE OF TEN AND ONE-HALF PERCENT (10.5%) OF GROSS REVENUE**

**WHEREAS**, the City of Milpitas (“City”) is in the midst of an unprecedented fiscal crisis caused by the recent recession and cuts in federal and State spending to support local governments; and

**WHEREAS**, since 2009, the City has laid off a total of fifty-four (54) employees including four (4) firefighters, the total number of funded employee positions have decreased by approximately twenty-five percent (25%) including ten (10) police officer positions, and another thirty-eight (38) employees have either been demoted or “bumped” into other positions; and

**WHEREAS**, cuts in police and firefighter budgets have threatened public safety and impacted the quality of life for Milpitas residents, businesses, and visitors, and the reduction in revenue and non-public safety employees have directly impacted services provided to the community including street maintenance and recreation and after-school programs; and

**WHEREAS**, the City lacks the funds to undertake essential capital improvements and maintenance, and the annual shortfall to maintain the recommended Pavement Condition Index goal of 70 is four million five hundred thousand dollars (\$4,500,000) per year; and

**WHEREAS**, the City Council adopted an Entertainment Overlay to its Zoning Code on April 6, 2010 that would allow for entertainment uses including operation of a licensed gambling establishment in specific areas in the City; and

**WHEREAS**, many of the existing ninety-six (96) State-licensed cardrooms listed on the Department of Justice’s Bureau of Gambling Control’s webpage are significant sources of local tax revenue that can fund staffing, economic development, and public infrastructure projects, such as those that have suffered in the City of Milpitas as a result of cuts in the City’s budget; and

**WHEREAS**, the State's Gambling Control Act, provisions in the State's Penal Code, the State's regulations and local gambling ordinances provide comprehensive regulatory frameworks so that the Gambling Control Commission, State Department of Justice's Bureau of Gambling Control and local jurisdictions can ensure that legalized gambling in cardrooms is highly regulated and problem gambling is controlled; and

**WHEREAS**, among other regulatory roles: the Gambling Control Commission licenses cardrooms, key employees and employees on a periodic basis; and the Bureau of Gambling Control performs background checks as part of the Commission's licensing process and authorizes games for play in cardrooms only if they are legal under California law; and

**WHEREAS**, the revenue to the City from a single cardroom license could generate approximately ten million dollars (\$10,000,000) in general and other taxes and pay for additional police officers, firefighters, street maintenance, recreational programs, and other general governmental services and programs; and

**WHEREAS**, Business and Professions Code Section 19960(c) and Article XIII C, Section 2 of the California Constitution require that the voters of a city must be asked to approve any measure that both permits controlled gambling within the city and imposes a general tax on gaming revenue to be paid by the cardroom operator; and

**WHEREAS**, the City Council has called a General Municipal Election to be consolidated with the statewide General Election on Tuesday, November 4, 2014; and



**WHEREAS**, the City Council desires to submit to the electors of the City of Milpitas at the General Municipal Election on Tuesday, November 4, 2014 a ballot measure proposal to add Chapter 8 to Title III of the Municipal Code to allow the City to issue a single license to operate a cardroom within the City in compliance with State law and impose a cardroom tax at the rate of ten and one-half percent (10.5%) of gross revenue.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. **Record.** The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. **CEQA.** The proposed City Council action is not a “project” under the California Environmental Quality Act of 1970 (“CEQA”), as amended, and any implementing local or State guidelines. Specifically, the proposed City Council action is not a “project” under CEQA Guidelines Section 15378 because it does not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The possibility of any indirect physical change in the environment resulting from the City Council’s action is too speculative to require environmental review under CEQA because of (a) the need for State legislation; (b) the need for voter approval; and (c) the need for future environmental discretionary permits to be approved by the City Council. Even if all three (3) of these speculative and necessary prerequisites were to occur, any potential physical changes in the environment would still be subject to CEQA review in connection with the City Council’s consideration of the required discretionary permits.

The proposed City Council action is also exempt from CEQA under CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (for the reasons described in the preceding paragraph).

The proposed City Council action is also exempt from CEQA under CEQA Guidelines Section 15273 (Rates, Tolls, Fares and Charges) because the City Council action is to raise revenue for the City of Milpitas to assist in funding for public safety, capital improvements, recreational programs, and other general governmental services.

3. **Voter Approval.** In order to provide revenue for police and fire protection, street improvements, recreational programs, and other general governmental services and programs, a ballot measure to approve an ordinance to add Chapter 8 to Title III of the Municipal Code to allow the City to issue a single license to operate a cardroom within the City in compliance with State law shall be presented to the voters at the General Municipal Election on Tuesday, November 4, 2014. The proposed Ordinance No. 285 is attached to this Resolution as Exhibit A. The vote requirement for passage of the ballot measure is a majority of the votes cast (50% plus 1).

- a. **Ballot Measure.** The ballot measure will be placed on the ballot for the November 4, 2014 election in the following form:

Shall one licensed gambling establishment in which any controlled games permitted by law, such as draw poker, low-ball poker, panguine (pan), seven-card stud, or other lawful card games or tile games, are played, be allowed in the City of Milpitas and shall that cardroom establishment pay a tax of 10.5% on gaming revenues?
--

YES	
NO	

- b. **Implementing Ordinance.** The proposed Ordinance No. 285 attached as Exhibit A to this Resolution shall appear in full in the sample ballot pamphlet in accordance with California Business and Professions Code Section 19960(c)(2).

4. **Election Official.** Pursuant to California Elections Code Section 12111 and California Government Code Section 6061, the City Council hereby directs the City Clerk to (a) cause a notice and synopsis of the proposed measure to be published in the Milpitas Post, a newspaper of general circulation within the City of Milpitas; and (b) do all other things required by law to submit the specified measure to the electors of the City of Milpitas at the General Municipal Election scheduled for November 4, 2014, including causing the full text of the proposed ordinance to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.
5. **Consolidated Election.** Pursuant to the requirements of California Elections Code Section 10403, the Board of Supervisors of the County of Santa Clara County is hereby requested to consent and agree to the consolidation of a General Municipal Election with the statewide General Election to be held on Tuesday, November 4, 2014 for the purpose of submitting the ballot measure to the voters of the City of Milpitas. The City of Milpitas requests the services of the Board of Supervisors of the County of Santa Clara and the Registrar of Voters of the County of Santa Clara to conduct said General Municipal Election and to consolidate such election. The Registrar of Voters is requested to provide all necessary election services and to canvass the returns of the General Municipal Election. The City of Milpitas shall reimburse the County of Santa Clara for services performed when the election is completed and upon presentation to the City of Milpitas of a properly approved bill.
6. **Impartial Analysis.** The City Council hereby directs the City Attorney to prepare an impartial analysis of the ballot measure not to exceed five hundred (500) words in accordance with California Elections Code Section 9280.
7. **Arguments in Favor.** Pursuant to California Elections Code Sections 9282-9287, the City Council hereby approves the Mayor and/or designee to prepare and submit a written argument in favor of the proposed ballot measure, not to exceed three hundred (300) words in length, on behalf of the City Council. Such written argument in favor of the proposed measure may include up to five (5) signatures in accordance with California Elections Code Section 9283.
8. **Arguments For and Against; Rebuttals.** The City Council hereby authorizes arguments for and against the ballot measure and rebuttal arguments to be filed in accordance with California Elections Code Section 9282-9287, and establishes August 12, 2014 at 5:00 p.m. (PST), as the deadline to file arguments for and against the ballot measure, and August 19, 2014 at 5:00 p.m. (PST), as the deadline to file rebuttal arguments. The City Council hereby approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes any member or members of the City Council to author and submit a rebuttal, if any.
9. **Public Examination Periods.** The City Council hereby establishes August 13, 2014 through August 22, 2014, as the ten (10) calendar day examination period required by California Elections Code Section 9295 with respect to arguments for and against the ballot measure and the impartial analysis. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure and the argument against the ballot measure in the Office of the City Clerk at 455 E. Calaveras Blvd, Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.

The City Council hereby establishes August 20, 2014 through August 29, 2014, as the ten (10) calendar day examination period required by California Elections Code Section 9295 with respect to any rebuttal arguments. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure, the argument against the ballot measure, and any rebuttal arguments in the Office of the City Clerk at 455 E. Calaveras Blvd, Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.
10. **Compliance with Law.** In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

11. **Certified Copy.** The City Council also directs the City Clerk to forward without delay to the Board of Supervisors of the County of Santa Clara and County Elections Official, each, a certified copy of this Resolution.
12. **Effective.** This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## **EXHIBIT A**

### **ORDINANCE NO. 285**

#### **AN ORDINANCE OF THE PEOPLE OF THE CITY OF MILPITAS APPROVING A LICENSED GAMBLING ESTABLISHMENT IN THE CITY OF MILPITAS IN ACCORDANCE WITH BUSINESS AND PROFESSIONS CODE SECTION 19960(C) AND IMPOSING A CARD ROOM TAX AT THE RATE OF TEN AND ONE-HALF PERCENT (10.5%) OF GROSS REVENUE**

The People of the City of Milpitas do ordain as follows:

#### **SECTION 1. TITLE**

This Act shall be known as “The Milpitas Economic Sustainability and Stabilization Act.”

#### **SECTION 2. RECITALS AND FINDINGS**

The City of Milpitas is in the midst of an unprecedented fiscal crisis caused by the recent recession and cuts in federal and State spending to support local governments; and

Recent losses in funding have significantly impacted the City of Milpitas and its ability to provide public safety, street maintenance, recreational programs, and other general public services, and has degraded the quality of life of Milpitas residents; and

Since 2009, the City has laid off a total of fifty-four (54) employees including four (4) firefighters, the total number of funded employee positions has decreased by approximately twenty-five percent (25%) including ten (10) police officer positions, and another thirty-eight (38) employees have either been demoted or “bumped” into other positions; and

A lack of local funding, inability to generate revenues, and minimal economic development tools have led to the inability of the City of Milpitas to invest in critical public infrastructure in the amount of approximately Two Hundred and Twenty Million Dollars (\$220,000,000), consisting of road, water, sewer, and other public improvements; and

The Milpitas City Council adopted an Entertainment Overlay to its Zoning Code on April 6, 2010, that would allow for entertainment uses in the Entertainment Overlay areas including the operation of licensed Gambling Establishments; and

Many of the existing ninety-six (96) State-licensed card rooms listed on the Department of Justice’s Bureau of Gambling Control’s webpage are significant sources of local tax revenues that can fund staffing, economic development, and public infrastructure projects, such as those that have suffered in the City of Milpitas as a result of cuts in the City’s budget; and

The State's Gambling Control Act, provisions in the State's Penal Code, the State's regulations and local gambling ordinances provide comprehensive regulatory frameworks so that the Gambling Control Commission, State Department of Justice's Bureau of Gambling Control and local jurisdictions can ensure that legalized gambling in card rooms is highly regulated and problem gambling is controlled; and

A licensed Gambling Establishment located in the City of Milpitas will generate significant sources of tax revenue, potentially up to Ten Million Dollars (\$10,000,000) annually, that will directly benefit its residents, businesses, and visitors by providing additional public safety services, street maintenance, recreational programs, and other general public services; and

California Business and Professions Code Section 19960(c) and Article XIII C, Section 2 of the California Constitution require that the voters of a city must be asked to approve any measure that both permits controlled gambling within the city and imposes a general tax on gambling revenues to be paid by the card room operator; and

It is the purpose and intent of the People of Milpitas that this Act go into effect when State law permits legal gambling in the City of Milpitas; and

Based on the foregoing, the People of the City of Milpitas find it is in the best interest of the City of Milpitas to approve a ballot measure to add Chapter 8 to Title III of the Municipal Code regarding issuance of a license to operate a card room in compliance with State law and imposing a Card Room Tax at the rate of ten and one-half percent (10.5%) of gross revenue.

### **SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The proposed approval of Ordinance No. 285 by the People of the City of Milpitas is not a “project” under the California Environmental Quality Act of 1970 (“CEQA”), as amended, and any implementing local or state guidelines. Specifically, the proposed action is not a “project” under CEQA Guidelines Section 15378 because it does not have the potential to result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The possibility of any indirect physical change in the environment resulting from the approval of the ordinance is too speculative to require environmental review under CEQA because of (a) the need for State legislation; (b) the need for voter approval; and (c) the need for future environmental discretionary permits to be approved by the City Council. Even if all three of these speculative and necessary prerequisites were to occur, any potential physical changes in the environment would still be subject to CEQA review in connection with the City Council’s consideration of the required discretionary permits.

The proposed action is also exempt from CEQA under CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment (for the reasons described in the preceding paragraph).

The proposed action is also exempt from CEQA under CEQA Guidelines Section 15273 (Rates, Tolls, Fares and Charges) because approval of the ordinance is to raise revenues for the City of Milpitas to assist in funding for public safety, capital improvements, recreational programs, and other general governmental services.

### **SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE TITLE III, CHAPTER 8**

The Milpitas Municipal Code is hereby amended to add a new Chapter 8 to Title III of the Milpitas Municipal Code and shall read as follows:

#### **Chapter 8 Gambling Control Regulatory Program**

##### **Section 1 – Authority.**

- A. Nothing herein contained is intended or shall be construed to be in conflict with or as a limitation upon any of the provisions of the Gambling Control Act (Bus. & Prof. Code § 19800 et seq.) or any other provision of State or federal law.
- B. The provisions of this Chapter shall not be construed so as to authorize legal gambling within the City's boundaries unless and until:
  - 1. A majority of the electors of the City voting thereon, and in a manner that complies with Business & Professions Code § 19960(c), affirmatively approves a measure permitting controlled gambling within the City; and
  - 2. California Business & Professions Code § 19962(a):
    - a. expires; or
    - b. is repealed; or
    - c. is amended or partially repealed in a manner that would permit the City to authorize legal gambling within its boundaries; or

- d. is superseded by any State or federal law that permits the City to authorize legal gambling within its boundaries; and
- 3. The requirements of this Chapter pertaining to the issuance of License have been satisfied.
- C. In no event shall this Chapter be effective until January 1, 2015.

## **Section 2 – Declaration of Intent and Purposes.**

The people of the City of Milpitas find and declare that the regulations of Gambling Establishment located in the City of Milpitas are necessary for the protection of the public health, safety and welfare. The provisions of this Title shall be broadly construed for the purposes of authorizing strict regulatory controls and oversight of Gambling Establishment, funding sources, and the practices, activities, persons and places associated with or involved in gambling in the City of Milpitas. Any license, permit, or approval issued pursuant to the provisions of this Title is a revocable privilege and no holder acquires any right in the license, permit, or approval other than the procedural rights granted under this Title or as required by the United States or California Constitution.

## **Section 3 – Definitions.**

For the purposes of this Chapter, the words and phrases hereinafter set forth shall have the following meanings ascribed to them unless the context clearly requires a different meaning:

- (a) "Bureau" means the Bureau of Gambling Control of the State Department of Justice.
- (b) "Card Room" means a business or enterprise licensed under the provisions of this Chapter for the playing of "Games" as defined in this Section.
- (c) "Card Room Administrator" means the Person identified by the City Manager to administer the City's regulation of any Licensee.
- (d) "Card Room Business" means the conduct of "Games" as defined in this Section and shall not include any "Related Business" as defined in this Section.
- (e) "Chapter" means Chapter 8 of Title III of this Code.
- (f) "Chief of Police" means the designated representative of the Milpitas Police Department.
- (g) "City" means the City of Milpitas.
- (h) "City Council" means the Milpitas City Council.
- (i) "City Manager" means the City Manager of Milpitas.
- (j) "Clerk" means the City Clerk of Milpitas.
- (k) "Commission" shall mean the California Gambling Control Commission as detailed in Business and Professions Code Section 19811 or any successor agency.
- (l) "Employee Applicant" means any Person who has applied for a work permit or renewal of a work permit for employment in a Card Room.
- (m) "Financier" means any Person who offers or provides a loan, credit, or any other form of financing to the Licensee Applicant or Licensee in any way related to the Card Room, provided "Financier" shall not be construed to include any Person with whom Licensee Applicant or Licensee has an agreement for the lease of equipment or other personal property.

- (n) "Gambling Establishment" is defined as set forth in California Business and Professions Code Section 19805(o) and without reference to California Business and Professions Code Section 19812.
- (o) "Gambling Table" means a table upon which a Game is played and to which a drop box is attached for the purpose of collecting fees for the play of the Game.
- (p) "Game" or "Games" means all games (whether or not involving the use of cards) that are lawful in the State of California.
- (q) "Gross Revenue" means all revenue, including table fees, directly derived from the play of Games by Licensee with the exception of revenue directly derived from Games played on a tournament table as part of an official tournament conducted at the Card Room.
- (r) "License" means a license for the operation of a Card Room.
- (s) "License Applicant" means any Person who has applied for a License or renewal of a License to operate a Card Room in the City.
- (t) "Licensee" means the Person or entity to whom a license has been issued for the operation of a Card Room pursuant to this Chapter.
- (u) "Municipal Code" means the Municipal Code of Milpitas.
- (v) "Owner" means every Person, firm, association, corporation, partnership, or other entity having any interest, whether legal, equitable, financial, or of any other kind or character, in any Card Room or License.
- (w) "Person" means and includes a natural person, association, organization, partnership, business trust, company, corporation, or any other entity.
- (x) "Permittee" means the Person to whom an employee work permit has been issued for employment in a Card Room pursuant to this Chapter.
- (y) "Related Business" means business activities occurring at a Card Room other than the playing of the Games, such as entertainment, dancing, events, fundraising by non-profits, the sale of food, beverages (including alcoholic beverages for consumption on the premises), sundries and other items and the provision of services such as barber shop services.
- (z) "State" means the State of California.

#### **Section 4 – Maximum Number of Gambling Establishments.**

The maximum number of Card Rooms permitted in the City shall be one (1), unless and until otherwise authorized by a vote of the people in accordance with State law.

#### **Section 5 – License Required.**

It is unlawful for any Person to establish, commence, conduct, operate or otherwise allow or permit within the City any business, activity, or enterprise of any Games for which a fee, commission, or other compensation is directly or indirectly charged, accepted, or received from players or participants until such Person shall have first obtained a License in full compliance with the provisions of this Chapter.

#### **Section 6 – Filing an Application for a Card Room License.**

- A. Filing of Application. Any Person desiring to operate a Card Room shall file with the Card Room Administrator an application for a License. The filed application shall be executed under penalty of

perjury and shall contain, in addition to all other information that the Card Room Administrator may require, the following information and material:

1. A copy of all licenses required by the State of California under State Gambling Law;
2. An official receipt from the City treasurer, indicating receipt of payment in full of the application fee as required by Section 6.H of this Chapter;
3. The date of the application;
4. The true name of the License Applicant, any aliases of the License Applicant, and any fictitious business name or names under which the License Applicant currently operates a business;
5. The status of the License Applicant as being an individual (or two or more individuals), firm, association, corporation, partnership, joint venture or other entity;
6. The status of the License Applicant as being eligible for a License pursuant to any requirements under State law;
7. The residence and business address of each individual License Applicant;
8. The name, residence, and business address of each of the partners, shareholders, and principal officers and directors of any non-individual License Applicant, including each of the partners, shareholders, and principal officers and directors of any parent company, holding company, subsidiary or otherwise that may in any way be affiliated with the License Applicant for the License application, License, or Card Room, except for any publicly held entity;
9. The business and employment history of the License Applicant(s) and of each proposed individual listed in Section 6.A.8, including a list of all places of previous residence;
10. The proposed location for the Card Room, although nothing in this Section shall require that the premises in which the Card Room Business will take place be designed, constructed, or completed prior to the issuance of a License;
11. A list of the Games proposed to be played initially upon opening of the Card Room and a statement that those Games comply with State law;
12. The number of Game tables proposed to be used in the Card Room;
13. A description of any Related Businesses proposed to be conducted at the same location;
14. In the event the proposed location is partly or wholly owned by persons or entities other than the License Applicant, the names and addresses of such other persons or entities and complete information pertaining to the nature and percentage of ownership;
15. A one-year detailed cash flow projection, a pro forma financial statement, a statement of pre-opening cash, a financing plan and copies of all loan agreements of the License Applicant;
16. A full and complete financial statement and most recent annual income tax return of the License Applicant, and a full and complete financial and invested capital statement of each person who is a limited partner, general partner, officer or director of the License Applicant;
17. A full and complete patron safety and security plan designed to protect patrons and other persons who are lawfully on the Card Room premises;



18. A full and complete accounting and internal control plan for card table funds, collection of fees, drop box and transportation and storage, counting of fees, cashiers cage operation, internal audit, security and monitoring, records retention, financial reports, tips, and signature authority;
  19. A statement that the License Applicant understands and agrees that the application shall be considered by the City Council only after full investigations and reports have been made by all applicable City staff;
  20. A complete listing of all criminal arrests and convictions of the License Applicant and each partner, shareholder, officer and director of the License Applicant, if any, not including traffic offenses, with explanations therefor;
  21. A statement that the License Applicant understands and agrees that any business or activity conducted or operated under any License shall be operated in full conformity with all the laws of the State and the laws and regulations of the City applicable thereto, and that any violation of any such laws and regulations in such place of business, or in connection therewith, shall render any License subject to immediate suspension or revocation;
  22. A statement that the License Applicant has read the provisions of this Chapter, understands the same and agrees to abide by all requirements contained in this Chapter; and
  23. A statement by the License Applicant agreeing that the sole and exclusive discretion as to the granting or denial of any such License shall be vested in the City Council.
- B. Filing of Business Records. The City will permit License Applicant to file proprietary business information confidentially. The confidential portions of the License application shall remain confidential and shall not be disclosed to any Person, unless otherwise required by law. In the event a request is made by a third party for any information set forth in this Section, the City will provide the License Applicant or the Licensee with reasonable and adequate notice to seek a protection from disclosure by a court of competent jurisdiction.
- C. Burden of Proof. The burden of proving its qualifications to receive a License is at all times on the License Applicant by preponderance of the evidence. By filing the application, the License Applicant accepts any risk of adverse public notice, embarrassment, criticism, or other action or financial loss which may result from action with respect to the application and expressly waives any claim for damages or otherwise as a result thereof.
- D. Obligation to Provide Information. A License Applicant may claim any privilege afforded by the Constitution of the United States in refusing to answer questions by the City Council, provided any such claim of privilege with respect to an application shall constitute sufficient grounds for denial of the application.
- E. Identity of Owners. The License Applicant shall also file with the Card Room Administrator a list of the names and addresses of all of the Owners. The Chief of Police shall determine whether or not an investigation of any Owner should be made by a teletype search of the records of the State Criminal Investigation and Identification Unit in Sacramento, California, or otherwise, and forthwith conduct said search or investigation as appropriate.
- F. Statements Confidential. All personally identifiable information, including but not limited to financial information, telephone numbers and addresses, required to be submitted as part of an application pursuant to this Chapter shall be confidential and not available for public inspection, unless otherwise authorized or required by law.
- G. Fingerprints - Photographs. Concurrently with filing the application, the License Applicant, each Owner and officer shall be fingerprinted and photographed by the Chief of Police.

- H. Control by Landlord or Financier. The Card Room Administrator may require the landlord of the Card Room site or Financier of the Card Room to submit a full application in compliance with this Chapter.
- I. Application Fee. The application fee is for regulation purposes and is levied pursuant to the authority of applicable laws. An application for a License shall be accompanied by deposit, payable to the City in cash, cashier's check, or other immediately available funds approved by the City, as follows:
  - 1. An application fee deposit of Five Thousand Dollars (\$5,000), which shall be retained by the City as a deposit for the costs and expenses of the investigation of the License Applicant and processing of the License application. License Applicant shall pay the City the full costs and expenses of the investigation based on the fully-loaded hourly rate of the applicable employee or individual performing the investigative services and processing of the License application.

#### **Section 7 – Investigation of Application and Determination if License Application is Full and Complete.**

- A. Whenever an application for a License has been filed with the Card Room Administrator, the Card Room Administrator shall determine whether the filed application is complete pursuant to this Section 7 of this Chapter. If the Card Room Administrator determines that the filed application is complete, the Card Room Administrator shall promptly refer such application or a copy thereof to the City Manager's office and other departments of the City, and promptly and diligently conduct an investigation to determine if the application is full and complete. Such matters subject to investigation include:
  - 1. A full and complete investigation as to the identity, character, and background of the License Applicant and the License Applicant's partners, officers, directors, management and staff including any partners, officers, directors, management and staff of any parent company, holding company, subsidiary or otherwise that may in any way be affiliated with the License Applicant for the License application, License or Card Room;
  - 2. A full and complete evaluation of the security and law enforcement requirements of the proposed Card Room;
  - 3. A comprehensive evaluation of the License Applicant's financial ability to adequately protect the patrons of the Card Room and the citizens of the community; and
  - 4. A comprehensive evaluation of all public health, welfare and safety matters concerning the proposed Card Room.
- B. The Card Room Administrator should determine if the filed application is full and complete or if the City needs to supplement the filed application with additional material within ninety (90) days of receiving the filed application. Within that time period, the Card Room Administrator or any other staff delegated an investigative responsibility by the City Manager may request in writing that the License Applicant provide additional relevant information or data not included in the application. The License Applicant shall submit such requested information within thirty (30) days after such request. Once all of the requested and required documents, records, information, data, or otherwise have been adequately provided, the City shall inform the License Applicant that the application is full and complete and will be considered by the City Council.

#### **Section 8 – Report and Recommendation to City Council on the Full and Complete License Application and Investigation.**

- A. The City Manager shall prepare and submit a report and recommendation concerning the full and complete application and the results of the investigation conducted pursuant to Section 7.A of this Chapter.
- B. The report and recommendation shall be submitted to the City Council no later than sixty (60) days from the date upon which the City Manager has certified the application is full and complete pursuant to Section 7.B of this Chapter.

- C. Submission of the report and recommendation by the City Manager shall trigger the notice requirement in Section 9 of this Chapter.
- D. In the event that the City Manager does not file the report and recommendation within the time specified in Section 8.B of this Chapter, the City Council may either proceed further without the City Manager's report and recommendation or may extend one (1) time by an additional forty-five (45) days the deadline for the City Manager to submit the report and recommendation to the City Council.

**Section 9 – Notice to the Public and Applicant of a Hearing by City Council to Consider Whether to Issue a License.**

- A. Whenever the City Manager submits a report and recommendation to the City Council on a full and complete License application and investigation pursuant to Section 8 of this Chapter, or in the event the City Manager does not file a report and recommendation and the City Council intends to act upon the application pursuant to Section 8.D of this Chapter, the City shall publish notice of a public hearing concerning its intent to consider whether the License application should be issued at least fifteen (15) days prior to the hearing date in accordance with California Government Code Section 6061. The City shall also provide the License Applicant with notice at least five (5) days prior to the hearing date. Both the notice to the public and to the License Applicant will set forth the time and place of the hearing.
- B. At the hearing, the City Council shall take public testimony.
- C. At the hearing, the City Council shall vote either to:
  - 1. Approve the application and grant the License applied for therein;
  - 2. Approve the application and grant the License applied for therein with the recommended conditions from the City Manager;
  - 3. Conditionally approve the application and grant the License applied for therein subject to specific conditions in addition to those conditions set forth in the application or recommended by the City Manager; or
  - 4. Deny the application and refuse to grant the License applied for therein pursuant to the grounds set forth in Section 11.A of this Chapter.
- D. The decision of the City Council shall be final and conclusive.

**Section 10 – Approval of a License Application.**

- A. If the City Council approves the application, the License Applicant will be required to comply with all of the terms, conditions, and obligations in the application, the License, the provisions of this Chapter, and all other State and federal laws.
- B. If the City Council approves the application with conditions not set forth in the application, the License Applicant will be required to comply with the conditions the City Council imposed as an express condition of approval of the application, all of the terms, conditions, and obligations in the application, the License, the provisions of this Chapter and all other State and federal laws.
- C. Within ten (10) days of approval of the application, the Card Room Administrator shall provide to the License Applicant a copy of the City's acceptance form, which shall contain any additional conditions imposed by the City Council and which shall state that the License Applicant is aware of and will abide by all conditions imposed by the City Council. Within ten (10) days of receipt of the City's acceptance form, the Card Room Administrator must receive the acceptance form signed by the License Applicant. Upon receipt of the acceptance form signed by the License Applicant, the Card Room Administrator shall issue the License.

**Section 11 – Grounds for Denial of an Application.**

- A. The City Council may deny a License application based on any one or more of the following reasons:

1. The proposed business or activity to be operated violates any federal, State or City law or regulation.
  2. The License Applicant, including any shareholder or officer, has been convicted of any crime punishable as a felony (including a plea of no contest) or of any crime of violence, any crime involving fraud, gambling, loan sharking, bookmaking, thievery, bunco, moral turpitude, or any crime involving evasion of taxes, or any other crime of moral turpitude indicating a lack of business integrity or business honesty, whether committed in the State of California or elsewhere, whether denominated as a felony or as a misdemeanor and notwithstanding the passage of time since the conviction.
  3. The License Applicant has been credibly identified by any law enforcement agency, legislative body or crime commission as a member of, or an associate of, organized criminal elements.
  4. The License Applicant knowingly made any false statement in the filed application or in presenting any other information as part of the application process or investigation.
  5. The License Applicant failed to satisfy the City Council as to the source of funds to be invested in the Card Room.
  6. The License Applicant does not have the financial capability or business experience to operate a Card Room in a manner that would adequately protect the patrons of the Card Room and the citizens of the community.
  7. The License Applicant is presently under indictment or the subject of a criminal complaint for any of the crimes described in Section 11.A.2 of this Chapter.
  8. The application failed to present reasonable evidence that there is adequate financing available to pay potential current obligations and provide adequate working capital to finance opening of the proposed Card Room.
  9. The failure of any Person named in the application to appear before the City Council after having been requested by the City Council to appear and provide information or answer questions before it.
  10. The failure to include in the application an adequate plan for maintaining the security of the Card Room to ensure that all cash reserves and deposits in the Card Room, as well as the employees and patrons of the card room, are reasonably safe from theft, robbery, burglary or other crimes.
  11. The proposed location of the Card Room in an area other than in the Recreation & Entertainment Overlay District as set forth in Section XI-10-12.07 of the Municipal Code.
  12. The Commission has revoked or suspended the License Applicant's State gambling license or has denied the License Applicant's application therefor or denied the application of a shareholder or officer or that of which an entity which she/he is the shareholder or officer.
  13. Approving the License application is contrary to public interest and the policies of this Chapter.
- B. In the resolution denying the application pursuant to Section 11.A of this Chapter, the City Council shall set forth the ground or grounds for its action.

## **Section 12 – Term, Transfer and Renewal of a Card Room License.**

- A. The term of a Card Room License shall be twenty-five (25) years from the date on which it was issued.

- B. No Card Room License may be transferred except in accordance with this Chapter. Any proposed transfer or assignment of any License, including changes in new shareholder, partners, or ownership interest of the Licensee, shall be considered for all purposes as a new application for a License, and all the provisions of this Chapter applicable to new and original applications shall apply.
- C. Not more than one (1) year nor less than six (6) months prior to the expiration of a License, Licensee may file with the Card Room Administrator an application for renewal of the License and pay the applicable renewal fee. In addition to the information and materials required in Section 6 of this Chapter, the Licensee shall provide a statement about its historical compliance with this Chapter, the License, and State or federal laws. In order to deny an application for renewal, the City Council must find that the Licensee is in violation of the terms, conditions, or obligations of its License or in violation of this Chapter or State or federal laws when it considers the application for renewal. In the event that the City Council grants the application for renewal, the process for acceptance of the new License described in Section 10.C of this Chapter shall be complied with.

### **Section 13 – Surrender, Suspension, Revocation or Divestiture of a Card Room License.**

- A. A Licensee may surrender its License by written notice to the City Manager.
- B. Any License issued under this Chapter may be suspended or revoked by the City Council for violation of any of the provisions of the License, this Chapter, or any provisions of this Municipal Code or of a federal or State law. The holder of a License shall be given prompt notice of revocation or suspension of said License. Said notice shall fix a time and place, not less than five (5) nor more than thirty (30) days after service thereof, at which time the holder of said License may appear before the City Council and be granted a hearing upon the merits of said suspension or revocation.
- C. Any Licensee or Owner, including shareholders and officers, who is convicted (or pled no contest) of a misdemeanor involving moral turpitude or a felony shall immediately notify the Card Room Administrator and divest himself/herself of such ownership interest within thirty (30) days after the service of a notice of divestiture by the City. Upon receipt of a notice of divestiture, the Licensee or Owner may request in writing a hearing before the City Council to appeal the notice and request a waiver of the divestiture requirement. A hearing shall be scheduled before the City Council within thirty (30) days after the receipt of such request. Upon the conclusion of the hearing, the City Council may disregard the conviction or take other action if it is determined by the City Council that mitigating circumstances exist and that the public interest will be adequately protected. The decision of the City Council shall be final and conclusive. Failure to comply with the provisions of this Section 13 shall constitute a misdemeanor, punishable by a fine or imprisonment. Each day of noncompliance shall constitute a separate and complete offense. In addition, the City Attorney may invoke any appropriate civil remedies available to enforce compliance. No Person required pursuant hereto to divest his/her interest in a Card Room may transfer the same to his/her spouse, children, siblings, or parents or to his/her spouse's children, siblings or parents, or any other Person.

### **Section 14 – Where a Card Room May be Located.**

A Card Room may only be located in the Recreation & Entertainment Overlay District as set forth in Section XI-10-12.07 of the Municipal Code. The location of the Card Room License shall be site specific and any changes to the approved location specified in the License shall require an amendment to the License approved by the City Council.

### **Section 15 – Hours of Operation.**

A Card Room is permitted to operate twenty-four (24) hours each day of the year at the specific location authorized in the License. Licensee shall have their business hours clearly posted at all entrances to give law enforcement and patrons notice of the hours during which the licensed Card Room will remain open for business.

### **Section 16 – Legal Games.**

Any Game permitted by law in the State of California may be played in a Card Room licensed under this Chapter.

### **Section 17 – Wagering Limits.**

There shall be no limit on the size of any bet except as may be determined by the Licensee and as permitted under State law.

### **Section 18 – Maximum Number of Tables.**

- A. There shall be no more than one hundred and fifteen (115) licensed gambling tables in the City.
- B. The maximum number of gambling tables permitted in any one (1) Card Room shall be one hundred and fifteen (115).

### **Section 19 – Removal of Persons and Exclusion of Undesirable Persons from Card Room Premises.**

#### **A. Removal**

- 1. A Licensee may remove any Person from, in, on or about any Licensed Card Room premises if that Person:
  - a. Appears to or otherwise engages or has engaged in disorderly conduct, as defined in Section 647 of the California Penal Code;
  - b. Appears to or otherwise interferes or has interfered with a lawful gambling operation;
  - c. Appears to or otherwise solicits or has solicited or engages or has engaged in any act of prostitution;
  - d. Appears to or otherwise is or has been under the influence of any intoxicating liquor or drug;
  - e. Appears to or otherwise has been mentally incapacitated to the extent that such Person cannot care for himself/herself or control his/her actions;
  - f. Appears to or otherwise is or has been overly loud, panhandles, is boisterous, or is otherwise disturbing or offensive to other persons in, on or about the Card Room;
  - g. Appears to or otherwise commits or has committed any public offense;
  - h. Is, was or appears to be a Person whose presence is inimical to the interests of the Licensee or the business of the Card Room, as determined by Licensee in its reasonable discretion;
  - i. Is a Person, whose name appears on the list of persons the Commission has determined are to be excluded or ejected from any gaming establishment pursuant to Business and Professions Code Section 19844 and any regulation adopted pursuant thereto;
  - j. Has requested, pursuant to Section 12464 of Title IV of the California Code of Regulations, to be self-excluded from the Card Room; or
  - k. Has requested, pursuant to Section 12463 of Title IV of the California Code of Regulations, that their access to the Card Room be self-limited and the Licensee, in its reasonable discretion, determines that removal of the Person is required to comply with that request.

2. Except as provided in Section 19.B of this Chapter, removal of a Person from the premises of a Card Room pursuant to Section 19 of this Chapter carries no presumption that the Person is within the class of Persons defined as "undesirable persons" in Section 19.B.1 of this Chapter.

B. Exclusion

1. A Licensee may exclude from all or any portion of the premises of a Card Room Premises any Person who is determined to be "undesirable" within the meaning of this Section. For the purposes of this Section, the following persons shall be deemed to be "undesirable:"
  - a. Persons who have engaged in any act of, or who have been convicted of bookmaking or illegal wagering;
  - b. Persons who appeared to or otherwise have engaged in any act prohibited in Section 19.A of this Chapter;
  - c. Persons who have been convicted of or pled no contest to any violation of Section 337a of the California Penal Code or any other felony, misdemeanor or violation relating to the act of cheating in, on or about the premises of a Card Room whether or not convicted within or without the state;
  - d. Persons whose presence is inimical to the interests of the Licensee or the business of the Card Room, as determined by Licensee in its reasonable discretion; or
  - e. Persons who have requested, pursuant to Section 12463 of Title IV of the California Code of Regulations, that their access to the Card Room be self-limited and whom the Licensee, in its reasonable discretion, determines must be excluded in order to comply with that request.
2. For purposes of this Section:
  - a. "Bookmaking" means and includes, but is not limited to, any act prohibited by Section 337a of the California Penal Code, or by Section 19595 of the California Business and Professions Code;
  - b. "Illegal wagering" includes, but is not limited to, any act prohibited by Sections 319 through 336, inclusive, of the California Penal Code.
3. Licensee shall inform any Person excluded from the premises of a Card Room of the reason for the exclusion and shall notify such Person of the provisions of Section 19 of this Chapter. Notification of an order of exclusion issued by a Licensee shall be made by personal delivery to the Person excluded. A copy of Section 19 of this Chapter shall be attached to such notification.
4. Licensee shall immediately notify the Milpitas Police Department of the name of the Person so excluded and the reason for the exclusion, and provide such other information required by the Milpitas Police department.
5. No Person named in an order of exclusion shall fail to comply with the terms of such order. An order of exclusion shall be enforceable by Licensee by any lawful means, including a civil injunction proceeding or other appropriate remedy, in the Santa Clara County Superior Court or other court of competent jurisdiction, or by local law enforcement.
6. A Licensee may also exclude from all or any portion of the Licensed Card Room premises any Person who:

- a. Is a Person, whose name appears on the list of Persons the Commission has determined are to be excluded or ejected from any gaming establishment pursuant to Business and Professions Code Section 19844 and any regulation adopted pursuant thereto; or
- b. Has requested, pursuant to Section 12464 of Title IV of the California Code of Regulations, to be self-excluded from the Card Room.
- c. Sections 19.B.3, 19.B.4 and 19.B.5 of this Chapter shall not apply to the exclusion of any Person pursuant to this Section 19.B.6 of this Chapter.

**C. Indemnification**

Licensee shall protect, indemnify, defend and hold City, its City Council members, officers, employees, and agents harmless from and against any and all liability, loss, cost, demand, and obligation arising out of or relating from any injury or loss caused directly or indirectly by any cause whatsoever in connection with or incidental to Licensee removal or exclusion of any Person pursuant to this Section 19 of this Chapter.

**Section 20 – Protection of Minors.**

No Licensee or holder of an employee work permit shall knowingly or willingly permit or allow any Person under the age of eighteen (18) years to enter upon the premises of a Card Room premises, or any part thereof, nor shall any Licensee knowingly or willingly permit or allow any Person under the age of twenty-one (21) to play any of the Games authorized by the License. Notwithstanding, Persons under the age of twenty-one (21) shall be permitted in the following areas:

- A. An area, physically separated from any gambling area, for the exclusive purpose of dining. For purposes of this Section, any place where food or beverages are dispensed primarily by vending machines shall not constitute a place for dining.
- B. Restrooms.
- C. A supervised room that is physically separated from any gambling area and used exclusively for the purpose of entertainment or recreation.

**Section 21 – Reporting of Criminal Activity and 911 Calls**

- A. Owner, Licensee or employee shall immediately make a report to the Milpitas Police Department upon discovery of any conduct which raises a reasonable suspicion that a misdemeanor or felony crime has been committed on the Card Room premises. In addition, Owner, Licensee or employee shall report any conduct which raises a reasonable suspicion of a violation of this Chapter to the Card Room Administrator within four (4) hours of its discovery.
- B. Licensee shall maintain a chronological criminal activity log and such other reports as the Card Room Administrator may determine are needed in order to effectively assist the Milpitas Police Department to carry out its law enforcement function and protect the public health, safety and welfare.

**Section 22 – Employee Work Permits.**

- A. A Person who desires to be employed by a Card Room in the City shall obtain an employee work permit. It is unlawful for any Licensed Card Room to employ any Person who does not have an employee work permit issued by the Chief of Police. The Chief of Police shall maintain a list of all current and past possessors of an employee work permit.
- B. Each and every independent contractor, vendor, or other third Person who performs work or services at the Card Room premises shall be approved by the Chief of Police prior to commencing any work or services at the Card Room premises. The Chief of Police, in his/her reasonable discretion, may require



the independent contractor, vendor, or other third Person to submit an employee work permit application and follow the process set forth in this Section 22 of this Chapter and such Person or Persons together with Persons identified in Section 22.A above, shall be designated Employee Applicants for purposes of this Section.

- C. Employee work permits may not be transferred or assigned in any manner.
- D. Any Person wishing to obtain an employee work permit from the City shall file an application with the Chief of Police. The Chief of Police shall process and review all applications for employee work permits in accordance with such rules and regulations as may be promulgated by the City in accordance with this Chapter. The application shall be completed and the Employee Applicant will be required to provide photographs and fingerprints, in addition to such other information as the application may require. The investigation and permitting fee for each prospective employee shall be determined and approved by the City Council as part of the City's Schedule of Fees. The Licensee may reimburse any employee work permit holder for the amount of the investigation and permitting fee.
- E. The Chief of Police shall immediately notify the Employee Applicant, in writing, if the application for an employee work permit is approved or denied. For a minimum of one (1) year from the revocation or denial of an employee work permit, the Employee Applicant or former permittee shall not reapply for an employee work permit absent a change in facts showing good cause.
- F. The Chief of Police shall, on behalf of the City, promptly upon receipt of such application, submit the completed application to the California State Department of Justice. The State Department of Justice shall provide summary criminal history information to the Chief of Police for the purpose of issuing work permits. Upon the receipt by the Chief of Police of such criminal history information, provided the criminal history information does not reveal any grounds set forth in Section 22.G of this Chapter for denial of an application and the application does not require any additional investigation as determined by the Chief of Police, the Chief of Police shall approve the application within thirty (30) days.
- G. The Chief of Police may deny, suspend, or revoke an employee work permit, provided that such action is based on one or more of the following reasons:
  - 1. The Employee Applicant has made any false statements in the application or any other information presented as part of the application, or the Employee Applicant has failed to disclose, misstated or otherwise misled the City with respect to any fact contained in any application for a work permit;
  - 2. The Employee Applicant is less than twenty-one (21) years of age;
  - 3. The Employee Applicant has been convicted of, or failed to disclose a prior conviction of or pled no contest to, a felony or, in the case of a conviction by a federal court or a court in another state, a crime that would constitute a felony if committed in California;
  - 4. The Employee Applicant has been convicted of or pled no contest to, or failed to disclose a prior conviction of any misdemeanor involving dishonesty or moral turpitude within the ten-year period immediately preceding the submission of an application, unless the Employee Applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code; provided, however, that the granting of relief pursuant to these sections shall not constitute a limitation on the discretion of the City;
  - 5. Association of the Employee Applicant or employee with criminal profiteering activity or organized crimes, as defined by Section 186.2 of the Penal Code;
  - 6. The Employee Applicant has committed, attempted, or conspired to do any acts prohibited under the Gambling Control Act;

7. The Employee Applicant has committed, attempted, or conspired to commit, any embezzlement or larceny against a gambling licensee or upon the premises of a Gambling Establishment;
  8. The Employee Applicant has been convicted in any jurisdiction of, or failed to disclose a prior conviction of, any offense involving or relating to gambling;
  9. The Employee Applicant has been refused, or failed to disclose the prior refusal of, the issuance of any license, permit, or approval to engage in or be involved with gambling or pari-mutuel wagering in any jurisdiction, or had the license, permit, or approval revoked or suspended;
  10. The Employee Applicant has been prohibited under color of governmental authority, or failed to disclose a prior prohibition, from being present upon the premises of any licensed Gambling Establishment where pari-mutuel wagering is conducted, for any reason relating to improper gambling activities or any illegal act; or
  11. Any applicable federal, State or City law or regulation requires that the application be denied.
- H. The Chief of Police is authorized to issue temporary or conditional work permit pending a full investigation and processing of an employee work permit application, provided such temporary or conditional work permit may be revoked at any time based on any of the factors set forth in Section 22.G of this Chapter. A revocation of the temporary or conditional work permit shall be considered a denial of the employee work permit application and the Employee Applicant may appeal such decision as provided in Section 22 of this Chapter.
- I. If an application is denied by the Chief of Police, the Employee Applicant may appeal such denial by written notice to the Card Room Administrator within ten (10) calendar days of the denial decision. The Card Room Administrator shall cause a hearing to be held before a hearing officer within thirty (30) calendar days of receipt of such written notice requesting an appeal. A reasonable fee may be charged for the filing of a request for an appeal in accordance with the City's Schedule of Fees approved by the City Council. The hearing officer may be an employee of the City provided the employee was not involved in the decision to deny the work permit application and will serve as an independent, neutral hearing officer. The hearing officer shall schedule and conduct such hearing in accordance with the rules and regulations promulgated in Chapter 20 of Title I of the Municipal Code. At the conclusion of such hearing, the hearing officer shall issue a decision in writing within fifteen (15) calendar days which shall reflect either the hearing officer's approval, conditional approval, or denial of the application. The hearing officer's decision shall be final and conclusive.
- J. The Chief of Police may issue an order summarily suspending or revoking a Person's work permit upon a finding that the suspension is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The order is effective when served upon the holder of the permit. An order of summary suspension or revocation shall state the specific facts upon which the finding of necessity for the suspension or revocation is based. An order of summary suspension or revocation shall remain in effect for no more than thirty (30) calendar days, or until a final decision is rendered by a hearing officer appointed by the Card Room Administrator, whichever occurs last.
- K. In the event that a work permit is suspended or revoked, the holder of the permit may appeal the determination by submitting a written request to the Card Room Administrator no later than ten (10) calendar days from the date the notice was served upon the holder of the permit. A reasonable fee may be charged for the filing of a request for an appeal in accordance with the City's Schedule of Fees approved by the City Council. Upon receipt of the written request, the Card Room Administrator shall cause a hearing to be held before a hearing officer within thirty (30) calendar days in accordance with the procedures set forth in Section 22.I of this Chapter. Failure to submit a written request for a hearing within the ten (10) calendar days shall be deemed a waiver of the right of appeal. Except for an order summarily suspending or revoking a Person's work permit as described in Section 22.J of this Chapter, during the time period following the date the notice of suspension or revocation was issued and any time period prior to the scheduled appeal hearing date, any proposed action, including termination of the

employee or any reduction in employee compensation shall be stayed pending final determination of the hearing officer. Upon the final decision or order of the hearing officer suspending or revoking the permit, the holder of the permit may petition the Superior Court for the County of Santa Clara for judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

- L. When the application for an employee work permit is approved or conditionally approved, whether by the Chief of Police or the hearing officer, the City shall promptly issue an employee work permit to such employee and shall promptly so advise the Card Room employer in writing. Once issued, the employee work permit shall remain valid for a period of up to five (5) years or until it is revoked, suspended, or surrendered. The employee shall apply with the Chief of Police for a renewal of the employee work permit at least sixty (60) days prior to expiration of the employee work permit and pay the applicable renewal fee as approved by the City Council as part of the City's Schedule of Fees.
- M. The employee shall be required to visibly carry the employee work permit on his or her Person at all times while working on the Licensed Card Room premises. The employee work permit, or such other evidence of employment of each employee by the Card Room, shall be displayed on the Person of such employee in accordance with the rules established by the Card Room employer.
- N. When a Licensee terminates the employment of an employee for any reason whatsoever, the holder of the employee work permit shall immediately surrender his or her employee work permit to the Licensee who shall then promptly remit the same to the City.
- O. When all appeals of the denial, suspension, or revocation of an employee work permit have concluded, upon final and conclusive action by the hearing officer, or in the absence of any appeal, the holder of the employee work permit shall immediately surrender his or her employee work permit to the Licensee who shall then remit the same to the City. Upon the Licensee being advised in writing of the conclusion of such appeals upon such final and conclusive action of the hearing officer, or in the absence of any appeal, the Licensee shall immediately cease to employ the Employee Applicant at the Card Room.
- P. All information received by the City by means of an application for an employee work permit shall be treated as confidential and shall be accessible only to the Card Room Administrator and/or designee, the Police Department, the City Attorney, and, if determined appropriate by the Chief of Police or City Attorney, to the Permittee or Employee Applicant, or their attorney, unless otherwise authorized by law.
- Q. Licensee shall keep on file with the Milpitas Police Department and on the Card Room premises, as to each employee of the Card Room, a comprehensive employee list and the following current information:
  - 1. Residence address;
  - 2. Current occupation and employment;
  - 3. Age, date of birth, height, weight, color of hair and eyes;
  - 4. Driver's license and social security numbers;
  - 5. A current full face photo of each owner, officer, employee, or agent of the Card Room.

The information kept on file at the Card Room Premises shall be made available on demand for viewing and copying by the Card Room Administrator or Milpitas Police Department.

### **Section 23 – Designation of Agent.**

A Licensee shall designate an agent or agents who shall be authorized to act for Licensee with the City.

### **Section 24 – Administration by the City.**

- A. The City Manager shall designate a Card Room Administrator who will manage, coordinate, implement, and enforce all of the functions, powers and duties as set forth in this Chapter. The Card Room Administrator shall report to the City Manager or Police Chief, as the City Manager deems appropriate.

- B. In conjunction with the City's departments, the Card Room Administrator shall:
1. Coordinate the interaction of all of the City's department administrators with the Licensee, including but not limited to the City Manager, the City Attorney, the head of the Department of Finance and the Chief of Police.
  2. Investigate the qualifications of License Applicants and prescribe all forms to be used for the investigation of the qualifications of License Applicants.
  3. Conduct investigations to:
    - a. Determine whether there has been any violation of this Chapter or of State law.
    - b. Determine any facts, conditions, practices, or matters necessary to the enforcement of this Chapter.
    - c. Aid in promulgating regulations.
  4. Conduct audits and reviews of Card Room operations as described in this Chapter to assure compliance with the requirements of this Chapter and conduct financial audits and reviews to assure that revenues are accurately recorded.
  5. In conjunction with the Chief of Police, investigate and take any actions authorized under this Chapter regarding all work permit cases affecting the granting, renewal, suspension, revocation, and addition of limitations and conditions to any work permit.
  6. Investigate and take any actions authorized under this Chapter concerning regulatory action against Card Room Licensees and work permittees.
  7. Collect all fees imposed by this Chapter.
  8. Perform such other functions and duties and hold such powers as are specifically conferred elsewhere in this Chapter.
  9. Perform such other functions related to the administration of this Chapter as he or she finds necessary or appropriate.
- C. Notwithstanding the provisions of Section 24.B of this Chapter, the Card Room Administrator is not authorized to conduct criminal investigations. Criminal investigations shall be conducted separately by the Police Department and not by the Card Room Administrator.

## **Section 25 – Regulations.**

- A. The Card Room Administrator is authorized to promulgate all regulations necessary to implement the requirements and fulfill the policies of this Chapter, including, but not limited to the following subjects:
1. Prescribe license and work permit application and renewal application forms and the scope of information required for licensing and permitting, including, but not limited to fingerprints, photographs, releases for criminal arrest, conviction, and other criminal history information, releases for financial, credit, business, and employment history, and certification of applicant responses under penalty of perjury.
  2. Procedures for investigating all applicants for licenses and work permits.
  3. Procedures for Card Rooms to accept negotiable instruments from patrons.

4. Procedures for regulatory action on licenses and permits, and for suspension, revocation, renewal and setting of limitations and conditions on work permits.
  5. Procedures for amendments to licenses and permits.
  6. Minimum security and surveillance controls by Card Rooms.
  7. Minimum internal controls for the effective control of internal Card Room fiscal and operational matters including, but not limited to the safeguarding of assets and revenues and maintenance of reliable records, accounts, and operations.
  8. Periodic financial and compliance reporting to the Card Room Administrator, including, but not limited to an annual audit prepared by an independent certified public accountant or firm, attesting to the financial condition of the Licensee, to the compliance of the Licensee with the requirements of this Chapter, and to the compliance of the Licensee with the requirements of the Card Room tax under this Chapter and its ability to accurately record and calculate the Card Room tax.
  9. Methods to assess and collect fees, late penalties, and interest.
  10. Criteria and procedures for reporting criminal or potential illegal activity on Card Room premises or connected with the operation of a Card Room to the police department.
  11. Define and limit areas of operation of the Card Room and the rules of the controlled games that Card Rooms are permitted to play under this Chapter.
- B. All the regulations promulgated by the Card Room Administrator, provisional or final, shall have the force and effect of law.

#### **Section 26 – Visibility and Inspection of Premises.**

All rooms in which Games are played shall be accessible and visible to all patrons. Licensee shall permit the Card Room Administrator or any City official authorized by the Card Room Administrator to inspect the entire premises of the Card Room, including but not limited to Game areas, administrative areas, security areas, security and surveillance equipment, cash counting rooms and vaults at any time without a search warrant.

#### **Section 27 – Access to Records.**

The Licensee shall allow the Card Room Administrator or his/her designee unrestricted access to inspect, copy, or otherwise remove all books, records, or security and surveillance equipment, video or photographs of the Card Room. Certain books and records are confidential and the contents thereof shall not become known except to the Persons charged by law with the administration of the provisions of this Chapter or pursuant to the order of any court of competent jurisdiction. All information obtained pursuant to this Chapter, or any statement or other information filed by Licensee, shall be treated as confidential and shall not be subject to public inspection, unless otherwise authorized or required by law. Notwithstanding, such information may be used in connection with the enforcement of this Chapter.

#### **Section 28 – Patron Safety and Security Plan.**

Licensee shall provide and maintain security on the Card Room premises including the parking area. Licensee shall employ a professional security staff to monitor the activities on the Card Room premises and take all reasonable steps necessary to assure that employees, patrons, and visitors are not involved in criminal activity or victims of criminal activity.

The Card Room Administrator and/or Chief of Police shall have the right to require amendments to the patron safety and security plan approved as part of the License application at any time that are, in his or her reasonable judgment, necessary to protect the public peace, health, safety, and welfare.

## **Section 29 – Card Room Tax.**

### **A. Card Room Tax.**

1. This Section 29.A is enacted solely to raise revenue for municipal purposes and is not intended for regulation. Each Licensee shall pay to the City on a monthly basis a Card Room tax, which shall be at the rate of ten and one-half percent (10.5%) of the total monthly Gross Revenue for the preceding month.
2. Each Licensee shall file with Card Room Administrator before the tenth day of each calendar month a report, on a form approved by the Card Room Administrator, under oath, showing the true and correct amount of Gross Revenue for the preceding calendar month. The monthly Card Room tax required under this Section 29.A, shall be due and payable on the tenth day of each and every month following the calculation of the total monthly Gross Revenue for the previous month. For example, and by way of illustration only, the Card Room tax calculated from the monthly Gross Revenue for the month of June would be due and payable on July 10th and delinquent on July 31st.
3. The Card Room Administrator may audit the Licensee's Gross Revenue as provided in Section 30 of this Chapter to determine whether the Licensee has accurately reported its Gross Revenue in accordance with generally accepted accounting standards and otherwise complied with the provisions of this subsection. If the Card Room Administrator determines that the Licensee has underpaid the Card Room tax imposed by this Section 29.A.3, she/he shall make a demand for the amount of the underpayment together with penalty of two percent (2%) and interest at the underpayment rate for the period from the date the tax was required to be paid to the date on which the underpaid amount was paid. In the case of an underpayment of greater than ten percent (10%), there shall also be imposed and added to the amount demanded a penalty in an amount equal to five percent (5%) of the underpayment, unless it is shown that such underpayment is due to reasonable cause as solely determined by the Card Room Administrator. The Card Room Administrator shall make any demand under this Section 29.A.3 within three (3) years of the date the Card Room tax was required to be paid. For the purposes of this paragraph, the "underpayment rate" shall mean one-month LIBOR (London Interbank Offered Rate) as reported by the Wall Street Journal.

## **Section 30 – Audits.**

- A. The Licensee shall submit to the Card Room Administrator a weekly report of the Gross Revenue of the Card Room. The weekly report outlining the Gross Revenue for the prior week shall be submitted to the Card Room Administrator before 5:00 p.m. of every Monday.
- B. The Licensee shall submit to the Card Room Administrator an annual financial statement audit. The financial statement shall be conducted by an independent certified public accountant licensed to practice in the State of California and shall be acceptable to the Card Room Administrator. The financial statement shall be submitted to the Card Room Administrator within seventy-five (75) days of the end of every calendar year.
- C. The Card Room Administrator may perform such financial compliance reviews and oversight of each Licensee as the Card Room Administrator considers necessary in order to assure that each Licensee is in full compliance with the requirements of this Chapter. The Card Room Administrator is authorized to contract for certified public accountants or other professionals that the Card Room Administrator considers necessary in order to conduct any independent audit or review or any compliance audit or review of Licensee.

- D. The Card Room Administrator has the right to review and approve any changes to the Licensee accounting and internal control plan approved with the License application before such changes are implemented. The Card Room Administrator shall have the right to require amendments to the accounting and internal control plan at any time that are, in his or her reasonable judgment, necessary to protect the public peace, health, safety, and welfare.
- E. All weekly reports, annual financial statements, or documents submitted, provided to or obtained by the Card Room Administrator or City pursuant to this Section 30 of this Chapter are proprietary information and shall remain confidential and not to be disclosed to any Person, unless otherwise required by law. In the event a request is made from a third party for any information set forth in this Section or for any other information provided on a confidential basis to the City by the Licensee, the City will provide Licensee with reasonable and adequate notice to seek a protection from disclosure by a court of competent jurisdiction.

### **Section 31 – Nondiscrimination—Compliance with Laws and Regulations.**

- A. The Licensee shall not unlawfully discriminate nor permit any unlawful discrimination in connection with the operation of the Card Room, including, but not limited to any unlawful discrimination based upon race, sex, marital status, age, color, creed, religion, national origin or ancestry.
- B. The Licensee shall use its best efforts to employ as many Persons as reasonably possible who live within the City, who reflect the demographic makeup of the City, and who otherwise satisfy the employment requirements of the Card Room. The Licensee may request the City to use City facilities to obtain employees and shall advertise in publications that are circulated in the general area of the Licensee's location.
- C. The Licensee will from time to time, upon request by the City, furnish to the City reasonable data concerning the nature of the efforts by the Licensee to otherwise comply with this Section 31.

### **Section 32 – Amendments.**

- A. The People of the City reserve the right and power to amend any and all provisions of this Chapter. Any amendment to this Chapter may not violate any provision of State law or the final judgment of a court of competent jurisdiction.
- B. Subject to the exceptions in this Section 32.B, the City Council may, without a vote of the electorate, amend any of the provisions of this Chapter.
  - 1. The City Council may not limit without the vote of the electorate:
    - a. The types of Games in Section 16 of this Chapter, or
    - b. The limits on wagers in Section 17 of this Chapter.
  - 2. The City Council may without the vote of the electorate:
    - a. Increase the number of tables that may be offered in a Card Room or throughout the City as set forth in Section 18 of this Chapter. Any increase in the number of tables must be consistent with State law. The City council has no authority to decrease the number of tables under that Section without the vote of the electorate.

### **Section 33 – Prohibited Gambling.**

- A. Except as provided in this Chapter, no Person shall deal, play, carry on, open, cause to be opened, or conduct any Game prohibited by State or federal law.

- B. It is unlawful for any Person, firm, corporation or association, owning, leasing, managing, controlling or having any interest in any property or premises lying within the City to allow the operation of any Game prohibited by State or federal law on such property or premises.

#### **Section 34 – Responsible Gambling Program for Employees.**

- A. Each Licensee shall provide to its employees a responsible gambling program that will include, at a minimum, the following elements:
  - 1. An employee assistance program;
  - 2. Mandatory referral of employees who appear to be at risk for compulsive gambling; and
  - 3. Provision of literature to employees on problem gambling and a list of referrals to agencies in the San Francisco Bay Area with programs for problem gamblers.
- B. Each Licensee shall provide the Card Room Administrator with an annual plan for a responsible gambling program that includes the program elements listed in this Section 34 of this Chapter.
- C. No employee of a Card Room Licensee, with the exception of a proposition player, shall play any permissible game during the employee's work hours, including any paid or unpaid breaks in the employee's work hours.
- D. No Licensee shall allow, permit, or suffer any employee of the Licensee, with the exception of proposition player, to play any permissible game during the employee's work hours, including any paid or unpaid breaks in the employee's work hours.
- E. Each Licensee is encouraged to undertake further efforts beyond the minimum responsible gambling program required by this Chapter.

#### **Section 35 – Responsible Gambling Program for Patrons.**

- A. Each Licensee shall make literature on problem or compulsive gambling easily available in locations visible to patrons in the Card Room.
- B. If literature on problem or compulsive gambling is reasonably available in English, Spanish, Vietnamese, Tagalog, Mandarin and/or Cantonese-Chinese, then the Licensee shall be required to make such literature easily available.
- C. Each Licensee shall participate in any State-required responsible gambling program for patrons and make all required payments to the State to support such programs.

#### **Section 36 – Patron Deposit Accounts and Credit**

- A. No Licensee, employee, funded player or otherwise shall:
  - 1. Provide any loan or credit to any patron including offering any loan or credit involving currency, checks or other negotiable instruments, or any other thing of value or any representation of value.

#### **Section 37 – Enforcement.**

Violation of any provision of this Chapter may be enforced in any manner authorized by this Chapter, the Municipal Code, or in law or equity.



#### **SECTION 4. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

#### **SECTION 5. EFFECTIVE DATE**

This Chapter, and all of the provisions thereof, shall become effective as set forth in Section 1, Chapter 8 of Title III of the Ordinance.

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND  
BFGC ARCHITECTS PLANNERS, INC**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California referred to herein as the ("City"), and BFGC Architects Planners, Inc., a California Corporation DBA "IBI Group Architecture Planning ("Consultant") as of August 5, 2014.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2016, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the professional standards normally observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial manner and shall conform to the professional standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the normal professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to normal standards of accuracy, completeness and coordination.
- 1.4 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment

of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant an amount not to exceed seventy six thousand dollars (\$76,000.00) based on time and materials for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours,

which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10) percent shall be retained by the City from each Agreement billing until the completion of the Agreement unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

**2.3 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

**2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

**2.5 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

**2.6 Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed eight thousand five hundred dollars (\$8,500.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

**2.7 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant

for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-

insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

## **4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each

of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than TWO MILLION DOLLARS (\$2,000,000) covering the licensed professionals' errors and omissions.

- 4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- 4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
- 4.3.3** The policy must contain a cross liability clause.
- 4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

#### **4.4 Requirements for All Policies.**

- 4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such



deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

**4.4.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

**4.6 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the

actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
  - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
  - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement

and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

**9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

**10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

**10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.

**10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in

whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Name of City Staff who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** Any written notice to Consultant shall be sent to:
- Dean Aron Tatsuno, AIA  
180 west Santa Clara Street, Suite 800  
San Jose, CA 95113
- Any written notice to City shall be sent to:  
Jeff Moneda, Public Works Director/City Engineer  
455 East Calaveras Boulevard  
Milpitas, California 95035
- 10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 Exhibits.** All exhibits and attachments to exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

IBI Group Architecture Planning

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Thomas C Williams, City Manager

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Dean Aron Tatsuno, AIA, Sr. Principal

Taxpayer Identification Number  
77-0166282

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APPROVED AS TO FORM:

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Michael J. Ogaz, City Attorney

Corporate Entity Number

C1398379

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APPROVED AS TO CONTENT:

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Jeff Moneda, Public Works Director/City Engineer



## **EXHIBIT A**

### **SCOPE OF WORK**

#### **General:**

The Milpitas Sports Center (MSC) has three pools, 25 meter, 25 yard, and approximately 20 ft X 40 ft, 3 ft deep training pool. The meter and yard pools were last resurfaced in 2006. All plaster was removed to the gunnite. New tiles were installed in the meter and yard pools, and new coping was installed in the training pool. In the summer of 2014 the training pool received a temporary resurfacing to allow its use for the summer season. Spot repairs to the meter pool shell were performed in early 2014. The pools receive high use year round including water exercise classes, lap swim, and summer swim lessons from June through August. The yard pool temperatures are maintained at 88 – 90 degrees to accommodate Arthritis Foundation water exercise classes. The meter pool temperatures are maintained at approximately 85 degrees. The lowest use levels occur during the months of November thru April and this is the time the City wishes to target the construction of the pool improvements.

Improvements are expected to include repair and resurfacing of the three pools, correction of any deficiencies throughout the pool deck area and within the pools for compliance with ADA, health and safety, and all other applicable codes, replacement of stairs and ramps in pools, replacement of lifeguard stands and diving platforms, upgrade of the pool lights to LED, installation of permanent outdoor showers, and removal of the wading pool and converting the area to a seating and picnic area, as budget allows.

CONSULTANT and the CITY recognize the importance of the need to maintain the CONSULTANT's key personnel throughout the entire duration of services, and therefore will conduct their business in a professional manner to schedule and support their personnel to provide the scope of services in a timely and professional manner. CONSULTANT shall not make any changes to the assigned personnel listed below without City written approval:

#### **Design Team:**

Principal-In-Charge – Dean Tatsuno, AIA  
Principal Architect – Patricia Lock, AIA  
Project Architect – Steve Sowa, AIA  
Job Captain – Andrew Seymour

**Sub-Consultants:**

Aquatic Design Group, Inc.  
2226 Faraday Avenue  
Carlsbad, CA 92008  
760.438.8400 Tel  
760.438.5251 Fax

Hohbach-Lewin - Civil  
260 Sheridan Avenue, Suite 150  
Palo Alto, CA 94306  
(650) 617-5930  
(650) 617-5932 fax

CUMMING - Cost  
475 Sansome St., Suite 520  
San Francisco, CA 94111  
(415) 748-3080  
(415) 748-3090 fax

**Task 1 – Concept Design:**

1. Initial Project Design Meeting – CONSULTANT shall meet with CITY staff to review design and scope. Review project goals, expectations, budget, scope and schedule. Verify regulatory items and necessary permits, approval process and administrative procedures. Clarify CITY preferred materials, equipment and available maintenance resources.

**Deliverable:**

- Attend initial project design meeting.
2. See Task 2 for assessments and investigations.
  3. Prepare preliminary design plans that include each of the following:
    - a. Preliminary layout of improvements in compliance with all applicable codes and regulations as adopted by the City of Milpitas.
    - b. Preliminary construction estimate.
    - c. Preliminary construction schedule.
    - d. Sketches of/images/cut sheets of proposed materials.
    - e. Prepare outline of technical specification.
    - f. The use of cost effective design, materials that require minimal maintenance.
    - g. Identify permits and project approvals that will need to be obtained.

**Deliverable:**

- Preliminary design plans
- Preliminary construction schedule
- Preliminary construction estimate
- Outline of technical specifications
- Sketches of/images/cut sheets of proposed materials.

4. Using program elements and Task 2 findings from the site investigation and information gathering, prepare a concept plan, including cost estimates, for the improvements. The concept plan shall address resurfacing of the pools and code and regulatory compliant improvements then the balance of the improvements budget can be applied toward betterments. The budget is intended to cover the following improvements:

- A. Repair and resurfacing (including tile replacement), of meter, yard and training pools.
- B. Correct any deficiencies throughout the pool deck area and within the pools for compliance with ADA, health and safety and all other applicable codes.
- C. Replacement of stairs and ramps in pools, lifeguard stands, and diving platforms, as required.
- D. Upgrade of pool lighting to LED lights.

Each of the items below shall be evaluated to determine the need for replacement or upgrade and a cost estimate provided. The City will then prioritize these items based on the budget remaining after a scope and cost estimate for items A thru D above are determined.

- ☐ Permanent exterior showers on the pool deck.
- ☐ Removal of wading pool (currently not in use) and reconfigure area to accommodate seating and picnic area.
- ☐ Installation of a shade structure for staff area for off duty Lifeguards
- ☐ Replacement of pipes in pipe tunnel from pump room to pools.
- ☐ Replacement of pool flow valves.
- ☐ Removal and replacement of concrete deck deficiencies and caulk and seal joints as necessary.

**Deliverable:**

- One concept plan for City review and approval (2 hard copies and one pdf file via email)
5. CONSULTANT shall meet with CITY staff to review issues associated with the proposed concept plan and identify the betterments that should be included in the project.

**Deliverable:**

- Attend one meeting in person with City to review concept plans. Prepare meeting agenda and summary.
6. CONSULTANT shall develop final plan within the City's Not to Exceed construction budget of \$430,000 for the Milpitas Sports Center Pool Resurfacing Project.

**Deliverable:**

- Final concept plan incorporating all City comments (2 hard copies and one pdf file via email)
7. CONSULTANT shall, with the CITY'S input develop a project schedule for the Design and Construction phases of the Project. The CITY wishes to put the project out to bid for construction in **January 2015, with construction to be completed prior to April 2015.**

**Deliverable:**

- Project schedule for design and construction phases

**Task 2: Condition Assessment, Field and Document Investigation for Design**

1. Condition assessment and evaluation of MSC pools and surrounding pool deck area to evaluate condition of the pools structure, compliance with all applicable codes and regulations. Including an evaluation of the pools, and surrounding pool deck areas, for compliance with the current ADA and Title 24 Standards.

**Deliverable:**

- Condition assessment and evaluation in memo to the City.
2. Field investigation and data collection of existing conditions at the MSC and shall also including review of as-builts, and any other information available for the project site.
- a. CITY will provide, but can not guarantee the accuracy of:
    - i. Available as-built plans in hard copy and/or CADD.
  - b. CONSULTANT to perform:
    - i. Field survey for
      - 1. Size and location of improvements

2. Size and location of existing structures
  3. All hardscape, as required.
  4. Any other information that is necessary to design the improvements.
- ii. Preparation of additional As- built CADD drawings not provided by the City must be approved in writing prior to proceeding with the work.
- c. CONSULTANT shall verify locations and inverts of existing underground piping related to the pools and all “as-built” plans provided by the City.
  - d. Any additional underground utility locating required shall be performed upon receipt of written authorization from the City.
3. Based on the findings of the field investigation and condition assessment additional design scope may be necessary. This additional design scope must be authorized by the City in writing prior to proceeding with the work.

### **Task 3: Final Design**

#### **Objective:**

Prepare bid documents, including specifications, drawings, and cost estimates within the CITY's cost plan and conceptual design in compliance with Public Contracts Code for a Public Works Project.

1. Prepare and submit construction plans, specifications and estimates (submittals 50%, and final design (99%) submitted to the Building and County Health Departments for review and approval for structures (as required), mechanical, plumbing, electrical and ADA site compliance work. A 100% set of plans which incorporate all comments from the City and the Building Department (if required) and will be used for bidding the work. For each phase of design the consultant shall respond to and incorporate the CITY's comments. CONSULTANT shall schedule a minimum of three weeks for City review of each submittal. The 50% submittal shall include one complete hard copy sets of plans, specifications and calculations. The 99% & 100% submittal shall include three complete hard copy sets of plans, specifications, and calculations stamped by a California licensed professional. All submittals shall also be submitted on CD in AutoCAD and PDF formats. Specifications shall be in MS word format, and cost estimate shall be in MS Excel.

#### **Deliverables:**

- Present & submit 50% PS&E at Team meeting (1 hard copy)
- Present & Submit 99% plans to the City of Milpitas Building Department and obtain approval, City to pay plan check fee (3 hard copy sets of plans, specifications, and calculations wet signed/stamped by a California licensed professional)
- Present & submit 100% PS&E at Team meeting (3 hard copy sets of plans, specifications, and calculations wet signed/stamped by a California licensed professional)

- All submittals shall also be submitted on CD in AutoCAD and PDF formats in addition to hard copy. Specifications shall be in MS word format, and cost estimate shall be in MS Excel.
2. CONSULTANT shall attend Team Meeting: Present 50%, 99%, 100% (99% submittal set to the Building Department (as required) after incorporating owners 99% comments) & Construction Documents package to CITY for review.

**Deliverables:**

- Present 50% PS&E at Team meeting.
  - Present 99% plans at team meeting.
  - Present 100% PS&E (99% Building Department Submittal) at Team meeting.
  - Present Construction documents suitable for public bidding at team meeting.
3. CONSULTANT shall coordinate and manage sub-consultants throughout Final Design phase.
  4. These plans shall be at reasonable scales, but not smaller than 1"=20' for site, and Civil, and 1/4" = 1' for architectural and structural plans. Details shall be of a minimum size to easily read and understand the information that is being conveyed.
  5. CONSULTANT shall be responsible for meeting the requirements of the City Building and Planning Departments, for review local and state codes for zoning, building, County Health Department, and CEQA submittal and approval requirements.
  6. Where applicable the CONSULTANT shall design the Project in compliance with latest City, State, and Federal Storm Water Pollution Prevention, Stormwater Treatment Requirements "C3" and Erosion Control guidelines. The CONSULTANT shall provide Erosion Control Plan details, guidelines and technical specification section for the Contractor use in preparing the project SWPPP and compliance with the State NOI requirements if the threshold of disturbed area is exceeded.

**Deliverables:**

- Provide Erosion Control Plan details, guidelines and technical specification section for the Contractor use in preparing the project SWPPP and compliance with the State NOI requirements
7. The CONSULTANT shall prepare the Project Plans using the CITY's Standard Title Block to be located at the bottom right of each Plan sheet. (City to provide title block in AutoCAD)
  8. Project Specifications shall be prepared using the CITY's standard front end (City to provide in Ms Word). The CITY also has several Technical Specification Sections which are also standard that may be used on the project. If CONSULTANT uses the CITY provided technical sections the CONSULTANT will be required to stand behind the design. All other technical specification sections shall be prepared by the CONSULTANT. The

specifications shall be created in conformance with the current industry standard, Construction Specification Institute "CSI" format. The technical specifications shall be coordinated with the plans and all the design disciplines. The technical specifications shall also accurately reflect the design plans for all the design disciplines. The construction documents shall conform to the applicable: Current California Building Codes as adopted by the City of Milpitas, National Fire Protection Association, Title 24, ADA, and all other applicable local, State and Federal codes, regulations, permit requirements, and conditions necessary for issuance of a the necessary permits for construction. The specifications shall include measurement and payment wording. The CONSULTANT shall coordinate the inclusion of the technical specifications into the front-end specifications as one packet. The CONSULTANT shall provide estimated construction costs in the form of the contractor bid proposal format. Unit cost items shall be used whenever possible. The construction schedule shall be specified in working days or calendar days as approved by the CITY.

9. Where applicable the CONSULTANT shall assist the CITY in coordination with utility companies including submittal of all necessary service applications. CONSULTANT shall provide all necessary information requested by utility companies. CONSULTANT shall incorporate all utility company comments into the design. CONSULTANT shall incorporate utility company review and approval times into the overall project schedule.

**Deliverables:**

- Completed utility company service applications, if required.
10. Where applicable the CONSULTANT shall also prepare all submittals for Santa Clara County Health and Building Departments permit review and approval as required. CONSULTANT shall respond to all County Health and Building Department comments. The CONSULTANT is responsible to submit to the County and Building Departments as many times as necessary to obtain approval at no additional cost to the City. The Building Department submittal process typically takes 15 working days for each submittal review. Each Building Department submittal requires five wet signed hard copies. County Health Department submittal requires on complete set of plans. County Health Department submittal typically takes at least four weeks.
  11. Final plans ready for bidding shall be submitted wet signed/stamped hard copy and on compact disk (CD) in AutoCAD and PDF formats.

**Deliverables:**

- Submit permit application to County Health Department
- Submit plans to Building Department for Permit review

**Task 4: Quality Control/Quality Assurance (QC/QA):**

CONSULTANT shall prepare plans, specifications, estimates, calculations, and other documents with the highest level of quality, free of technical and grammatical errors. CONSULTANT shall implement and maintain the following minimum quality control

procedures during the preparation of plans, specifications, estimates, calculations and all other documents relating to this project:

- Design and calculations are independently checked, corrected and back checked by the CONSULTANT;
- When different disciplines are involved, means to assure that conflicts and misalignments do not exist;
- QC/QA program shall provide for review and assurance of complete coordination and compatibility between the plans, specifications and estimated quantities;
- QC program shall include field reviews and review of all pertinent materials to assure compatibility of design with existing facilities.

CITY reviews of these documents shall not be considered part of the QC/QA program, but only intended to be for review of scope and to coordinate with other departments, QC/QA, compatibility, workable design and constructability of the design is the CONSULTANT's sole responsibility.

Packages submitted for review by the CITY shall be accompanied by a QA/QC statement signed by a principal within the firm that they have reviewed the package and finds that is in compliance with Task 1&3 of this scope of work.

**Task 4 Deliverable:**

- Signed QA/QC statement with each submittal in Tasks 1 and 3.

**Task 5: Bidding Support Services:**

CITY will be responsible for advertisement of the project. CONSULTANT shall assist CITY during bid solicitation process. CONSULTANT shall provide bid phase services, as requested by the CITY through award of the construction contract including the following; response to bidders' inquiries, preparation of addenda, attend and assist at two pre-bid meetings, evaluation of bids. Upon completion of bidding, CONSULTANT shall prepare a "Conformed" package of plans and specifications revised to incorporate all addenda ready to issue for contract award and construction. CONSULTANT shall submit five signed conformed sets of contract documents hard copies and one electronic copy on CD in AutoCAD, MS Word and PDF formats.

**Task 5 Deliverables:**

- Bidder clarifications
- Attend 2 Pre-bid meetings
- Addenda/response to bidder inquiries, if needed
- Bid evaluation
- Conformed plans & specifications (5 signed hard copy sets wet signed/stamped by a California licensed professional, set on CD in AutoCAD, MS Word, and PDF formats)

**Task 6: Construction Administration Support:**



1. CONSULTANT's responsibility to provide Construction observation and project administration duties shall commence with the award of the construction contract and shall terminate at the conclusion of the warranty/guarantee periods for the Contractor's work.
2. CONSULTANT shall advise and consult with the CITY in all matters and shall promptly submit all observations, recommendations, and reports to the CITY.
3. CONSULTANT shall provide technical and construction administration services within professional standards to observe and determine if the CONTRACTOR is in compliance with the intent of the contract documents and the timely completion of the Project, to the extent required in this Scope of Work.
4. CONSULTANT shall attend the Project pre-construction conference and other meetings as specified in project specifications.

**Deliverable:**

- Attend pre-construction meeting
5. CONSULTANT, as a representative of the CITY, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the CITY and the CONSULTANT, (1) to become familiar with and to keep the CITY informed about the progress and quality of the portion of the work completed, (2) to endeavor to guard the CITY against defects and deficiencies in the work, and (3) to endeavor to determine if the work is being performed in a manner such that the work, when fully completed, will be in accordance with the Contract Documents. The CONSULTANT shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.
  6. CONSULTANT shall attend construction meetings, as scheduled, with the Contractor, or as requested by the CITY. CONSULTANT shall provide commentary to the CITY on all material issues. Construction meetings are anticipated to be held once a week for the first month and every other week after that.

**Deliverable:**

- Attend construction meetings, as requested
7. CONSULTANT shall keep the CITY informed of its observations of the progress of the Project.

**Deliverable:**

- Perform regular site visits and reported deviations/observations

8. CONSULTANT shall promptly report in writing to the CITY any known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT's negligent, intentional, or reckless acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

**Deliverables**

- Perform regular site visits and reported deviations/observations
9. CONSULTANT shall review and respond to Contractor's Requests for Information (RFI's) and submittals including shop drawings, product data, and samples, for conformance with the design concept expressed in the Project Contract Documents. CONSULTANT shall coordinate its review and response to these documents with the CITY and the Contractor as needed to allow for work to proceed, and be cognizant of the Contractor's progress and schedule. In this regard, CONSULTANT shall work in good faith with the Contractor and the CITY to prioritize the processing of critical path RFI's and submittals and other Contractor submitted documents as outlined in this scope of work. CONSULTANT's review and response to RFI's and submittals shall be done in a timely and expeditious manner. So long as Contractor fully complies with the Project's approved submittal schedule, CONSULTANT shall review and respond to required submittals with such reasonable promptness as to cause no delay in the Work, while allowing sufficient time to provide adequate review. Generally, such review shall take no more than four (4) working days for RFIs and Ten (10) calendar days for all other submittals, so long as such submittals are timely and complete. CONSULTANT and its subconsultants shall review submittals for completeness and issue any rejections of submittals on incompleteness grounds as soon as professionally possible, but in no event later than five (5) working days. If additional time is required to review and respond to RFI's or submittals due to circumstances beyond CONSULTANT's reasonable control, CONSULTANT shall notify the CITY in writing of the grounds for such delay and request additional review and processing time from the CITY, the approval of which shall not be unreasonably withheld, but such determination shall be based upon the critical path of the subject document and the overall impact to the Contractor's progress. In such cases, CONSULTANT shall make good faith efforts to resolve or remedy the delay in an expeditious manner.

In cases where CONSULTANT's late response is due to CONSULTANT's negligence, intentional misconduct, or reckless conduct, CONSULTANT shall be held liable for that portion of delay damages incurred by the CITY arising from the CONSULTANT's conduct.

**Deliverables:**

- Submittal reviews
- Response to RFI's

10. CONSULTANT shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.
11. CONSULTANT shall review requests by the CITY for changes in the work, including adjustments to the contract price or time of completion. CONSULTANT shall provide a recommendation to the CITY in writing.
  - a. CONSULTANT shall review and respond to any Contractor-submitted Change Order within five (5) working days of its receipt.
  - b. CONSULTANT shall assist the CITY in the preparation of Change Orders and Construction Change Directives with all supporting documentation and data as necessary, for the CITY's approval and execution in accordance with the contract documents. Professional services for researching and preparing Change Orders or Construction Change Directives to correct errors and omissions caused by CONSULTANT shall be provided at no additional cost to the CITY.
  - c. CONSULTANT shall identify causes for all Change Orders to the CITY in writing for CITY's review.
  - d. CONSULTANT shall maintain all records relative to changes in the Work.
  - e. CONSULTANT shall be responsible for those costs associated with any and all Change Orders and/or delays to the extent caused by negligent, intentional, or reckless errors or omissions in the CONSULTANT's design.

**Deliverables:**

- Draft Change Orders and Construction Change Directives, as requested by the City
12. CONSULTANT may, after receiving approval from the CITY, reject work that does not conform to the contract documents. Whenever CONSULTANT considers it necessary or advisable for implementation of the intent of the contract documents, CONSULTANT will notify the CITY when consultant feels additional inspection or testing of the work in accordance with the provisions of the contract documents is necessary.
  13. CONSULTANT shall review, reports, summaries, instruction books, operational manuals, warranties, and other Contractor provided documents to determine in general, whether or not the Contractor is in compliance with the contract documents.

**Deliverable:**

- Review of and maintenance manuals, and warranties provided by the Contractor
14. As directed by the CITY, CONSULTANT shall assist the CITY in fulfilling the legal requirements and mandates of third-party regulatory agencies.

15. CONSULTANTS certification for payment shall constitute a representation to the CITY, based on the CONSULTANT's evaluation of the work and on the data comprising the Contractor's Application for Payment, that, to the best of the CONSULTANT's knowledge, information and belief, the work has progressed to the point indicated and that the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.

**Deliverables:**

- Review Contractor progress payments

16. CONSULTANT shall respond to CITY's questions in writing when such questions are necessary to provide clarification to the plans and specifications.

**Deliverable:**

- Provide Response to City's questions in writing.

17. CONSULTANT shall generate supplemental drawings and clarifications, as necessary, or as may be requested by the CONTRACTOR or the CITY to clarify the design intent at no additional cost to the CITY.

**Deliverable:**

- Generate Architectural Supplemental Instruction (ASI), as necessary

18. CONSULTANT shall review Notices of Potential Claim and render written decisions on all Notices of Potential Claim, claims, disputes or other matters in question between the CITY and Contractor relating to the execution or progress of the work as provided in the contract documents within five (5) working days or as agreed to by CONSULTANT and CITY.

**Deliverable:**

- Review notices of potential claims, claims, or disputes

19. CONSULTANT shall prepare a final punch list of any discovered incomplete and/or unaccepted items of the construction work for the CITY's review and approval. CONSULTANT shall make, with the CITY, a final close-out walk-through of the Project when all punch list items have been corrected in accordance with the requirements of the construction documents.

**Deliverables:**

- Attend Punch list walk and prepare Punch list

**Task 7: Record Documents and Project Closeout**

1. CONSULTANT shall review all Contractor supplied operation and maintenance manuals, and warranties.
2. CONSULTANT shall maintain up to date record drawings throughout project construction. Prior to acceptance of the Project by the City, CONSULTANT shall review for accuracy and completeness the Contractor's as-built drawings and specifications, and shall return them for Contractor revision if they are not accurate and complete. CONSULTANT shall incorporate all changes shown on the Contractor's As-Built Drawings, executed RFI's, submittals, and Contract Change Orders from the Conformed set into a final Record Drawing set. CONSULTANT shall also draft and initial the official Record Drawings and submit both a hard copy on Mylar and an electronic copy in the latest AutoCAD format, PDF and TIF on digital video disc (DVD) to the CITY within 25 days of receipt of completed Contractor red line drawings.

**Deliverables:**

- Prepare Record drawings (1 hard copy on Mylar and 1 electronic copy on DVD in AutoCAD, PDF and TIF formats)
3. Prior to the expiration of each of the Contractor's warranties and guarantees, CONSULTANT shall perform a careful review of the work subject to each warranty and guarantee. CONSULTANT shall immediately report any discovered defective materials or workmanship to the CITY so that the CITY may make timely demand to the Contractor to repair the defects.

**Deliverable:**

- Facility operation review and report prior to the expiration of each of the Contractor's warranties and guarantees.
4. CONSULTANT shall meet with the CITY or the CITY's Designated Representative promptly after Substantial Completion to review the need for facility operation services.
  5. Upon request of the CITY, and prior to the expiration of one year from the date of Substantial Completion, the CONSULTANT shall conduct a meeting with the CITY and the CITY's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the CITY.

**Task 8: Additional Services**

1. City will provide written direction and a budget for any additional service to be performed. Written authorization must be obtained from the City prior to the Consultant beginning additional services. The City will not be responsible for additional work that the Consultant performs prior to receiving written authorization.

Exhibit B																							
Compensation Schedule																							
Milpitas Sports Center - Pool Improvements																							
IBI Group Proposal 14864.000																							
TASK DESCRIPTION	IBI GROUP PERSONNEL							Aquatic Design Group (Pool Consultants)								HOHBACH LEWIN (Civil)			CUMMING PERSONNEL (COST)				
	PRINCIPAL	PROJECT MANAGER	STAFF	CONST MGR	ADMIN	TOTAL	TASK TOTAL	PRINCIPAL	PROJECT MANAGER	PROJECT ARCHITECT	CAD	TECH	CONST MGR	ADMIN	TOTAL	TASK TOTAL	PROJECT ENGINEER	TOTAL	TASK TOTAL	SENIOR COST MANAGER	COST MANAGER	TOTAL	TASK TOTAL
Task 1 - Concept Design																							
Meeting #1 - Start-Up	1	1	0	0	1	3	\$ 418	2	0	0	0	0	0	1	3	\$ 440	0	0	\$ -	0	0	0	\$ -
Preliminary Concept Plan and Meeting #2	0	2	0	0	1	3	\$ 408	0	4	4	0	0	0	0	4	\$ 700	0	0	\$ -	0	0	0	\$ -
Final Concept Plan and Meeting #3	0	2	0	0	1	3	\$ 408	0	2	0	0	0	0	0	2	\$ 350	0	0	\$ -	0	0	0	\$ -
Task 2 - Condition Assessment, Field & Doc Investigation																							
Review City Documentation	0	2	2	0	0	4	\$ 590	3	3	0	0	0	0	4	10	\$ 1,310	0	0	\$ -	0	0	0	\$ -
Perform Field Survey	0	3	3	0	0	6	\$ 885	0	4	0	0	0	0	0	4	\$ 700	6	6	\$ 1,050	0	0	0	\$ -
Verification of Inverts	0	2	0	0	0	2	\$ 330	0	0	0	0	0	0	0	0	\$ -	10	10	\$ 1,750	0	0	0	\$ -
Condition Assessment and Evaluation Memo and Meeting #2	1	4	0	0	2	7	\$ 991	0	4	0	0	0	0	4	8	\$ 900	2	2	\$ 350	1	4	5	\$ 815
Task 3 - Final Design																							
50% Documents and Meeting #4	2	6	14	0	0	22	\$ 3,160	8	16	8	16	0	4	52	\$ 7,480	0	0	\$ -	1	8	9	\$ 1,455	
99% Documents and Meeting #5	1	6	12	0	0	19	\$ 2,725	4	8	6	16	0	4	38	\$ 4,970	0	0	\$ -	1	8	9	\$ 1,455	
Respond to City Bldg Dept Comments	0	2	6	0	0	8	\$ 1,110	2	2	6	8	0	2	20	\$ 2,630	0	0	\$ -	0	0	0	\$ -	
100% Documents and Meeting #6	0	2	4	0	0	6	\$ 850	2	2	4	8	0	2	18	\$ 2,300	0	0	\$ -	0	0	0	\$ -	
Assist with Utility Company Submittal	2	2	0	0	0	4	\$ 680	0	0	0	0	0	0	0	\$ -	0	0	\$ -	0	0	0	\$ -	
Task 4 - Quality Control/Quality Assurance (QA/QC)																							
QC/QA Review and Revisions	1	2	3	0	0	6	\$ 895	1	3	3	0	0	1	8	\$ 1,265	0	0	\$ -	0	0	0	\$ -	
QC/QA Statement	0	1	0	0	1	2	\$ 243	0	0	0	0	0	0	0	\$ -	0	0	\$ -	0	0	0	\$ -	
Task 5 - Bidding Support Services																							
Attend 2 Pre-Bid Meetings #7, #8	0	2	0	0	0	2	\$ 330	0	0	0	0	0	0	0	\$ -	0	0	\$ -	0	0	0	\$ -	
Response to Bidders Inquiries/Issue Addendum	0	1	2	2	0	5	\$ 725	0	1.5	0	0	0	0	0.5	2	\$ 288	0	0	\$ -	0	0	0	\$ -
Evaluation of Bids	1	1	0	0	0	2	\$ 340	0	1	0	0	0	0	1	\$ 175	0	0	\$ -	0	0	0	\$ -	
Preparation of Conformed Plans & Specifications	0	1	0	0	0	1	\$ 165	0	0	0	3	1	0	4	\$ 425	0	0	\$ -	0	0	0	\$ -	
Task 6 - Construction Administration Support																							
Review and respond to Contractor RFIs, Submittals	0	3	0	8	6	17	\$ 2,163	1	4	0	0	15	4	24	\$ 2,970	0	0	\$ -	0	0	0	\$ -	
Review Change Orders	0	0	0	4	0	4	\$ 600	0	2	0	0	6	2	10	\$ 1,200	0	0	\$ -	0	0	0	\$ -	
CA Meetings	0	0	0	8	0	8	\$ 1,200	0	0	0	0	8	0	8	\$ 1,000								
Task 7 - Record Documents/Project Closeout																							
Incorporate Record Drawings	0	2	2	0	0	4	\$ 590	0	1	0	4	1	1	7	\$ 750	0	0	\$ -	0	0	0	\$ -	
Project Close Out and Facility Operation Review	0	2	0	0	2	4.07	\$ 491	0	0	0	0	1	0	1	\$ 125	0	0	\$ -	0	0	0	\$ -	
Subtotal Hours	9	49	48	22	14.07	142.07	\$ 20,297	23	57.5	27	55	32	29.5	224		18	18		3	20	23		
Personnel Rate	\$175	\$165	\$130	\$150	\$78			\$195	\$175	\$165	\$100	\$125	\$50			\$175			\$175	\$160			
PERSONNEL COST	\$1,575	\$8,085	\$6,240	\$3,300	\$1,097		\$ 20,297	\$4,485	\$10,063	\$4,455	\$5,500	\$4,000	\$1,475		\$ 29,978	\$3,150		\$ 3,150	\$525	\$3,200		\$ 3,725	
Subtotal:	\$ 20,297							\$ 29,978								\$ 3,150			\$ 3,725				

Task 1 - 7 Total:	\$ 57,150
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Task 8 - Additional Services \$ 10,350

Reimbursable Allowance: \$ 8,500

IBI Group

Plotting, Printing \$ 2,000  
Shipping, Delivery \$ 100  
Travel \$ -

Aquatic Design Group

Plotting, Printing \$ 4,000  
Shipping, Delivery \$ 300  
Travel, lodging \$ 2,100  
\$ 8,500

Total \$ 76,000

Date : 07/17/2014

**EXHIBIT C**

**INSURANCE DOCUMENTS**



**AMENDMENT NO. 3 TO THE AGREEMENT**

**WITH INTELLIGENT TECHNOLOGIES AND SERVICE, INC. FOR**

**FIRE SUPPRESSION TESTING AND ON CALL MAINTNENANCE AND REPAIR**

This Amendment is entered into this 16th day of July 2014, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Intelligent Technologies and Service, Inc.**, a California corporation (hereafter referred to as "CONTRACTOR").

**RECITALS**

WHEREAS, the parties entered into an Agreement for "Inspection, Testing Maintenance and Repair of the Fire Suppression Systems at the Police Building, Public Works/Corp. Yard, Community Center and the Sports Center" on January 6, 2010, which was approved by City Council on January 5, 2010 ("Agreement"). This was a one year agreement for the period January 6, 2010 to January 5, 2011 with an option for four (4) additional one (1) year renewals for a total one year Agreement amount of \$5,456.00 and a total five year agreement amount of \$27,280.00; and

WHEREAS, the parties entered into Amendment No. 1 to the Agreement on June 8, 2011 to increase the annual compensation by \$2,544.00 to cover the cost of on-call repairs for the remaining option years and a one time increase in compensation in the amount of \$3,308.02 to cover the cost of the removal, replacement and testing of four Duct Detectors at the Sports Center; and

WHEREAS, the parties entered into Amendment No. 2 to the Agreement on November 27, 2012 to increase the annual compensation by \$1,176.00 commencing on January 6, 2013 for the remaining two years of the Agreement to cover semi-annual inspections of the kitchen fire prevention hood in the Senior Center; and

WHEREAS, the parties desire to further amend the Agreement to allow CONTRACTOR to perform additional work not originally included in the scope of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Add the City Hall Edwards ES III Fire Alarm System located at 455 E. Calaveras Blvd, Milpitas, CA 95035. to the Agreement commencing on August 6, 2014 to February 2, 2015 in the amount of \$5,586.00 as set forth in the attached quotation and specifications, for a total five year agreement amount not to exceed \$48,702.02.

2. All other provisions of the Agreement not amended by this Amendment No. shall remain in full force and effect.



This Amendment is executed as of the date written on page one.

APPROVED BY:

CITY OF MILPITAS

INTELLIGENT TECHNOLOGIES  
AND SERVICE, INC.

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Name of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

\_\_\_\_\_  
Roger Robledo, Project Manager



**AMENDMENT NO. 1 TO THE AGREEMENT**  
**WITH**  
**PEELLE TECHNOLOGIES, INC.**  
**FOR**  
**DOCUMENT IMAGING**

This Amendment is entered into this 5<sup>th</sup> day of August, 2014, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "CITY") and **Peelle Technologies, Inc.**, a California corporation (hereafter referred to as "VENDOR").

**RECITALS**

WHEREAS, the City of Dublin issued a request For Proposal for Laserfiche Scanning And Indexing Services on May 7, 2012; and after completing the solicitation and award process the City of Dublin and CONTRACTOR entered into an agreement for imaging and scanning services related to the City's records for a term from November 6, 2012 to July 31, 2014; and

WHEREAS, the CITY has determined the City of Dublin Request For Proposal process met all of the CITY's Purchasing Ordinance requirements for Milpitas Municipal Code Section I-2-3.07 (Piggyback Procurement); and entered into an agreement for the purchase of imaging and scanning services related to the City's records for the total annual amount of Eighty-Five Thousand dollars (\$85,000.00) for the term from February 20, 2013 to July 31, 2014 ("Agreement"); and

WHEREAS, the City of Dublin has extended the term of the Agreement from July 31, 2014 to July 31, 2016; and

WHEREAS, the parties desire to amend the Agreement to extend the term of the Agreement until July 31, 2016 and reduce the annual amount of the Agreement to Fifty Thousand dollars (\$50,000.00).

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. The term of the Agreement is extended from June 30, 2014 to July 31, 2016.
2. The total annual amount of compensation is reduced to Fifty Thousand dollars (\$50,000.00).
3. All other provisions of the Agreement not amended by this Amendment No. 2 shall remain in full force and effect.

This Amendment is executed as of the date written on page one.

APPROVED BY:

CITY OF MILPITAS

PEELLE TECHNOLOGIES, INC

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Name of Authorized Representative

APPROVED AS TO FORM:

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	400-2970	\$ 45,815	400-423-4241	\$ 45,815
<input type="checkbox"/> Budget Transfer				

**Explain the reason for the budget change:**

**Background:** Pursuant to State public contracting law and Council Resolution No. 7779, the Director of Public Works must report all emergency public works repairs to the City Council. On November 24, 2013, the Dempsey Road twelve-inch diameter cast iron water transmission main ruptured near Edsel Drive causing a significant system water pressure drop and outages in the area bounded by Calaveras Blvd. to the north, I-680 to the west, Landess Ave. to the south, and Piedmont Rd. to the east. The Public Works stand-by crew responded and isolated the failed pipe section to restore system pressure except for the isolation zone at the break (between 123 and 500 Dempsey Road). The pipe blow-out caused street flooding and damaged the service lateral and parking lot asphalt at 275 Dempsey, as well as the street pavement, curb, gutter, and sidewalk. Due to the size of the repair and the urgent need to restore water supply to the neighborhood, the Director of Public Works authorized Preston Pipelines to make emergency repairs. Preston mobilized a crew and worked with the City crew to restore water service by the following morning. Preston completed the remaining work including removing an abandoned shutoff valve, service lateral repair, private parking lot and driveway repair, street pavement and sidewalk restoration during the week of Thanksgiving and the Monday following. Preston did not immediately submit an invoice for this work due to an accounting error on their part, but discovered the error in an audit and has now submitted an invoice in the amount of \$45,814.89. The Dempsey Road cast iron water main was installed in 1955 and is reaching the end of its design life. A section located a few hundred feet south failed in October 2012 and another section just north of this one failed in December 2012. Engineering has started replacement of this water main in a Capital Improvement Program which started design in July 2014.

**Fiscal Impact:** \$45,815. An appropriation from the Water Fund is needed due to insufficient funds in the Public Works FY13-14 operating budget for this emergency work.

**Recommendations:**

1. Receive this report of Dempsey Road water main emergency repair work from the Public Works Director and authorize staff to pay invoice in the amount of \$45,815.
2. Approve a budget appropriation in the amount of \$45,815 from the Water Fund to the Public Works FY13-14 operating budget.

☒ Check if City Council Approval required.

Meeting Date: August 5, 2014

Requested by:	Department Head: Jeff Moneda, PW Director	Date: July 17, 2014
Reviewed by:	Finance Director: <i>Jim C. Karl</i>	Date: 7/18/14
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:

**RESOLUTION NO. \_\_\_\_\_**

**A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS, THE COMMISSION OF THE MILPITAS HOUSING AUTHORITY AND THE BOARD OF THE MILPITAS ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING CONVEYANCE OF CERTAIN REAL PROPERTY TO THE CITY OF MILPITAS FOR PUBLIC AND ECONOMIC DEVELOPMENT PURPOSES, AND OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE CITY MANAGER TO ACCEPT THOSE CONVEYANCES AND APPROVING CERTAIN INTERFUND LOANS**

**WHEREAS**, the Milpitas Economic Development Corporation, Inc. (“MEDC”) is a California nonprofit public benefit corporation formed by the City of Milpitas (“City”) under the laws of the State of California; and

**WHEREAS**, the MEDC has the power to provide economic services to eliminate blight, provide affordable housing, improve the public realm, facilitate public and private developments, stimulate the economic development, create jobs and other appropriate purposes; and

**WHEREAS**, in the usual and regular course of its activities, MEDC has the power to enter into transactions involving transfer of properties with the City, in accordance with MEDC’s specific charitable and public purposes, for providing public and economic development services; and

**WHEREAS**, on June 17, 2014, the City of Milpitas, the Milpitas Housing Authority (MHA) and the MEDC entered into a Settlement Agreement with the County of Santa Clara, the State Controller and the State Department of Finance regarding the transfer of assets of the former Milpitas Redevelopment Agency (“Settlement Agreement”); and

**WHEREAS**, the Settlement Agreement allows MEDC to retain ownership of approximately 10.89 acres located in the Milpitas Transit Area, commonly known as the “McCandless Property” (APN Nos. 086-41-016, 086-41-017, and 086-41-018) and determines that the property owned by the MHA located at 1452-1474 South Main Street (APN Nos. 086-22-029 and 086-22-030), hereinafter “South Main Street Property,” is not subject to the housing-related provisions of the Community Redevelopment Law and the dissolution legislation; and

**WHEREAS**, as part of the Settlement Agreement, the City’s General Fund has fully paid the County Auditor-Controller for these two properties and thus the City currently retains equitable title over both properties; and

**WHEREAS**, in order to make full payments to the County Auditor-Controller as part of the Settlement Agreement, the Transit Area Impact Fee Fund needed to obtain a temporary interfund loan of Five Million Dollars (\$5,000,000) from the 2% Transit Occupancy Tax Fund to be repaid in accordance to the City’s Interfund Loan Policy; and

**WHEREAS**, Assembly Bill 1484 added Section 34167.10 to the California Health and Safety Code, which includes in the definition of a “city” to include any entity controlled by the city or for which the city is financially responsible or accountable; and

**WHEREAS**, Section 34167.10 of the California Health and Safety Code further considers several factors to determine whether an entity is controlled by a city and is therefore defined as a city, including substantial municipal control over the entity’s operations, revenues, or expenditures, municipal involvement in the creation or formation of the entity, the entity’s performance of traditional municipal functions and receipt of municipal support; and

**WHEREAS**, based on these factors set forth in Section 34167.10 of the California Health and Safety Code, the State Department of Finance and the State Controller retroactively determined that the MEDC is not an independent and separate legal entity from the City for the purpose of asset transfer between the City and MEDC; and

**WHEREAS**, the McCandless Property will be conveyed from the MEDC to the City based on the following: (i) the City’s General Fund has made full payment to the County Auditor-Controller for the McCandless Property and the City currently has equitable title of the property; (ii) in the usual and regular course of its activities, MEDC has the power under its Bylaws to transfer properties in accordance to its charitable and public purposes; and (iii) State Department of Finance and State Controller have previously determined the MEDC and City are not two separate legal entities; and

**WHEREAS**, the South Main Street Property will be conveyed from the Milpitas Housing Authority to the City based on the following: (i) the City's General Fund has made full payment to the County Auditor-Controller for the South Main Street Property and the City currently has equitable title of the property; and (ii) the Settlement Agreement provides that the property is not subject to the housing-related provisions of the Community Redevelopment Law and the dissolution legislation.

**NOW, THEREFORE**, the City Council of the City of Milpitas, Commission of the Milpitas Housing Authority, and the Board of the Milpitas Economic Development Corporation hereby find, determine, and resolve as follows:

1. The City Council, MHA Commission and MEDC Board have considered the full record before them, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to them. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The Executive Director or designee of the Milpitas Housing Authority is authorized to execute all necessary documents to convey the real properties located at 1452-1474 South Main Street (APN Nos. 086-22-029 and 086-22-030) from the Milpitas Housing Authority to the City of Milpitas.
3. The President or designee of the Milpitas Economic Development Corporation is authorized to execute all necessary documents to convey the real properties identified as APN Nos, 086-41-016, 086-41-017, and 086-41-018) from the Milpitas Economic Development Corporation to the City of Milpitas.
4. The City Manager of the City of Milpitas is hereby authorized to accept the conveyance of those two properties.
5. The City Council hereby approves the interfund loan of Five Million Dollars (\$5,000,000) from the 2% Transit Occupancy Tax Fund to the Transit Area Impact Fee Fund to be repaid in accordance to the City of Milpitas Interfund Loan Policy.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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Mary Lavelle, City Clerk,  
MHA Secretary, MEDC Secretary

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Jose S. Esteves, Mayor,  
MHA Chair, MEDC Chair

APPROVED AS TO FORM:

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Michael J. Ogaz, City Attorney  
MHA Counsel, MEDC Corporate Counsel